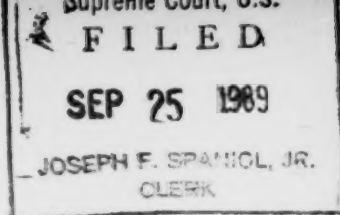


89-517
No. _____



SUPREME COURT OF THE UNITED STATES

October Term, 1989

ROBERT WOODS,

Petitioner,
vs.

JOSEPH E. HUDAK,

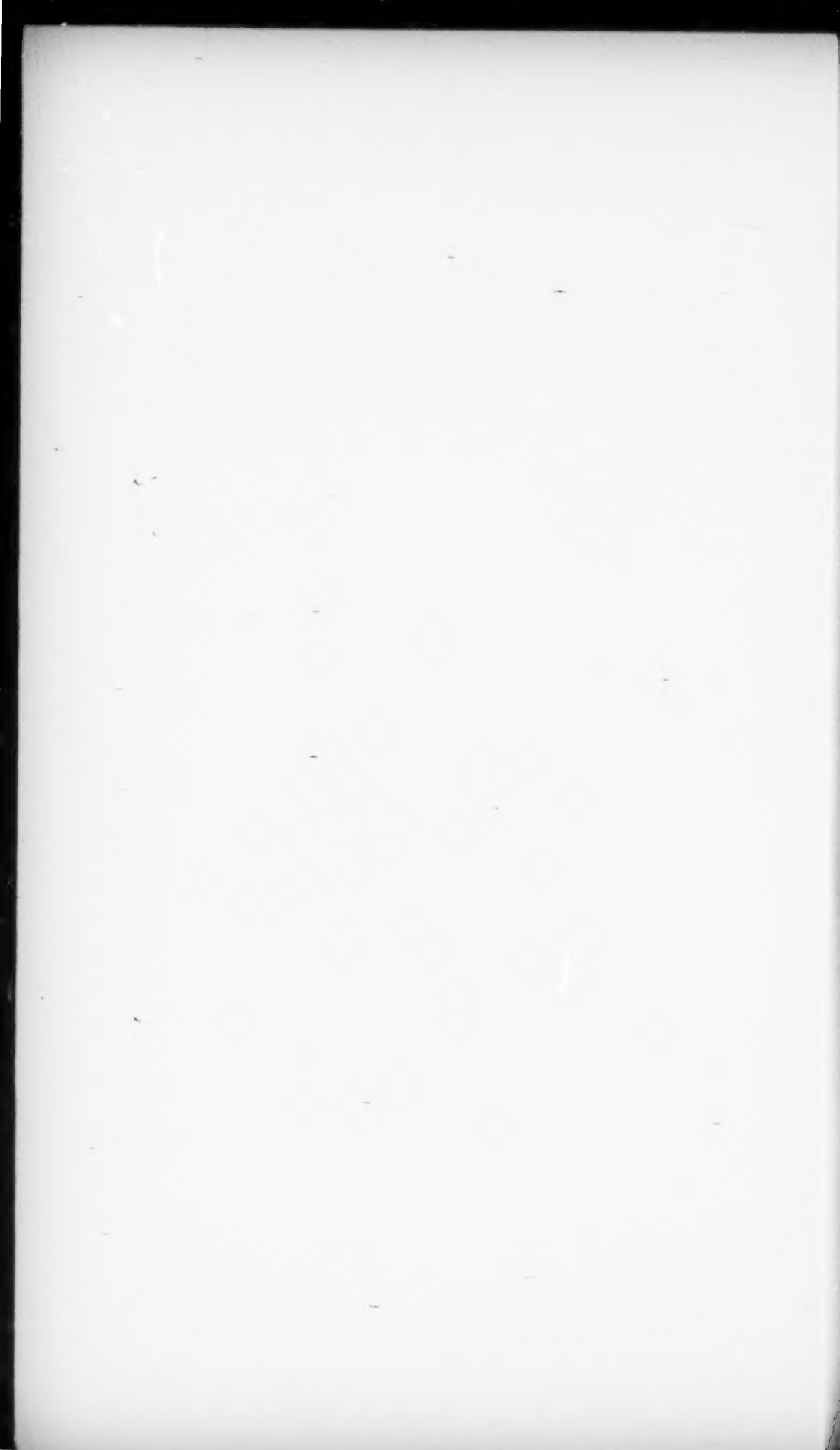
Respondent.

Writ of Certiorari
to the United States Court
of Appeals for the Third Circuit

APPENDIX TO
PETITION FOR WRIT OF CERTIORARI
VOLUME I

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APPENDIX TO
PETITION FOR WRIT OF CERTIORARI

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NOTE: The misspellings of the district court opinions are not corrected herein.

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

NOS. 89-3030, 89-3043, 89-3069, 89-3070

JOSEPH E. HUDAK

vs.

**ROBERT WOODS,
MICHAEL S. GEISLER
RICHARD O'BRIAN**

**Robert Woods,
Appellant in Nos. 89-
3030 and 89-3070**

JOSEPH E. HUDAK

vs.

**ROBERT WOODS,
MICHAEL S. GEISLER
RICHARD O'BRIAN**

**Michael S. Geisler,
Appellant in No. 89-
3043**

JOSEPH E. HUDAK

A - 1



vs.

ROBERT WOODS,
MICHAEL S. GEISLER
RICHARD O'BRIAN

Richard O'Brian,
Appellant in No. 89-
3069

On Appeal From the United States District
Court for the Western District of
Pennsylvania (Pittsburgh) (D.C. Civil
Action No. 87-1999)

Argued April 11, 1989

BEFORE: HIGGINBOTHAM, STAPLETON,
and ROSENN,

Circuit Judges

(Opinion filed Jun 28, 1989)

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OPINION OF THE COURT -

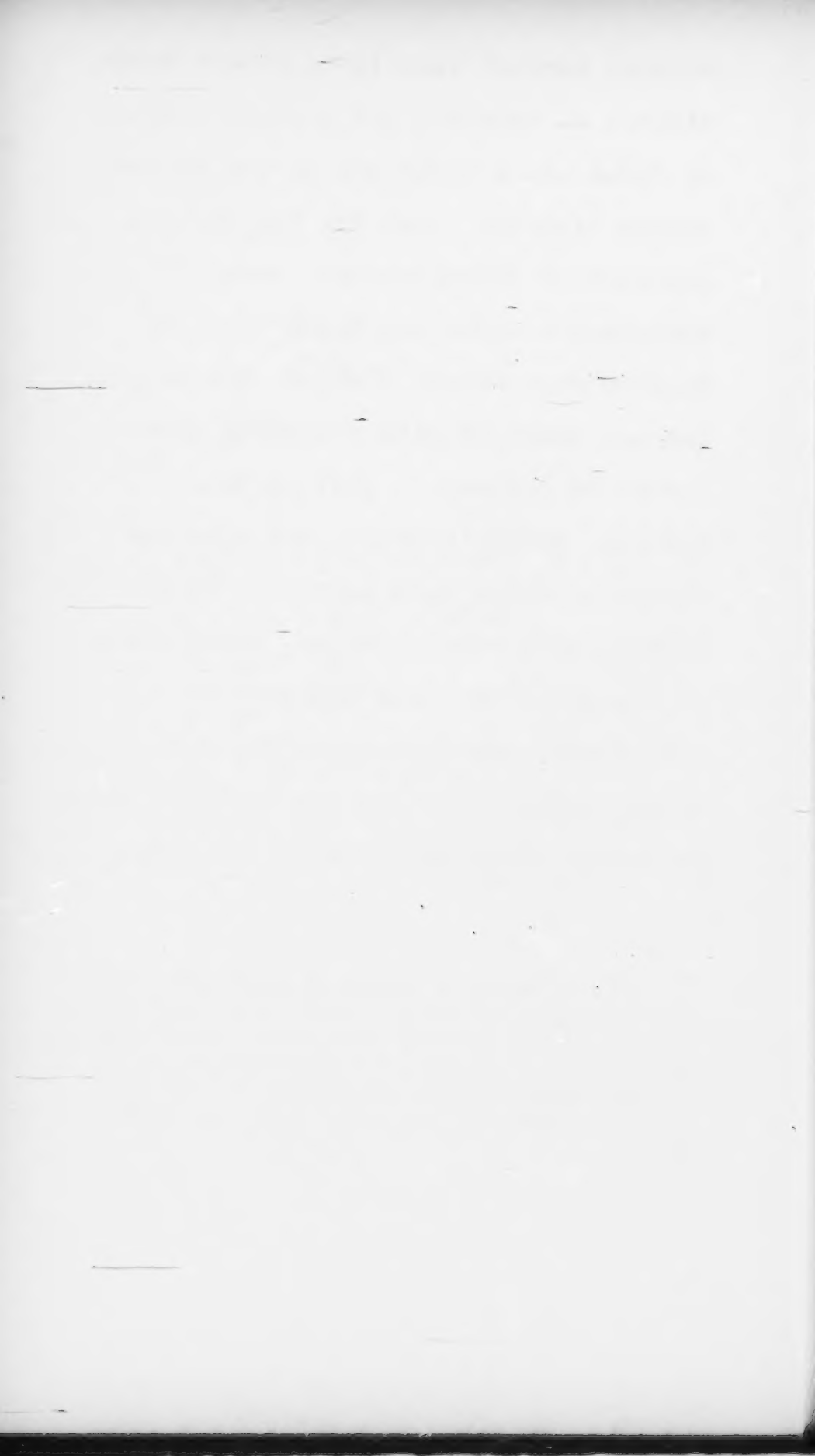
STAPLETON, Circuit Judge:

This is an appeal from an order dated December 22, 1988 articulating the conditions the appellants must satisfy in order to purge themselves of civil contempt and providing for the appointment of a special master to aid the court in ensuring compliance with a prior order. The December 22 order was



entered against appellants Robert Woods, Michael S. Geisler, and Richard O'Brian¹ by Judge Louis Rosenberg of the United States District Court for the Western District of Pennsylvania. Judge Rosenberg's order was based upon his finding that Woods, O'Brian, and Geisler had not complied with a consent order issued on October 1, 1987 to which Geisler, Woods, O'Brian, and appellee Joseph E. Hudak were parties. We will affirm, with clarification, those parts of the order that are designed to effectuate compliance with the consent order, while directing the district judge to delete those portions of the order

¹. O'Brian's name is spelled alternately "O'Brien" and "O'Brian" on papers filed in the district court and in this court, as well as throughout the transcripts of the hearings in the district court. We will use the latter spelling.



that are not appropriately tailored to obtaining compliance.

I.

This appeal represents one aspect of a bitter feud waged between Robert Woods and his cohorts on the one hand and Woods' son-in-law, Joseph Hudak, on the other. The feud has consumed the parties, overpowering reason, decency, and civility. We will not here recount in full this sorry history, instead confining ourselves for the most part to the facts arising after October 1, 1987 (the date of the consent order) after sketching the background of the case. Our narrative will reflect the findings of Judge Rosenberg.

Hudak's association with Woods dates from the time Hudak was engaged to marry Woods' daughter, Sharon Lavelle, a



registered nurse and the mother, by a prior marriage, of two young boys. Hudak began practicing law in 1986, and one of his first clients was his future father-in-law. Hudak represented Woods in various civil and criminal matters and, at Woods' urging, was later drawn into helping Woods in his mortgage broker business. The relationship was a cordial one; Hudak testified that Woods viewed him as "the son he never had," Woods apparently made various business loans to Hudak, as well as providing money to help Sharon and her two boys.

During this period--in 1986 and 1987--Hudak also built up a thriving law practice based on noncomplex divorce and bankruptcy cases. Through advertising, over one thousand clients were obtained in a few months. Although Hudak was the attorney of record on most of these



cases, he did not actually do the legal work on them. Instead, in late 1986, he hired attorney Michael Geisler to handle the divorce and bankruptcy cases. Geisler also handled the accounts payable for the firm.

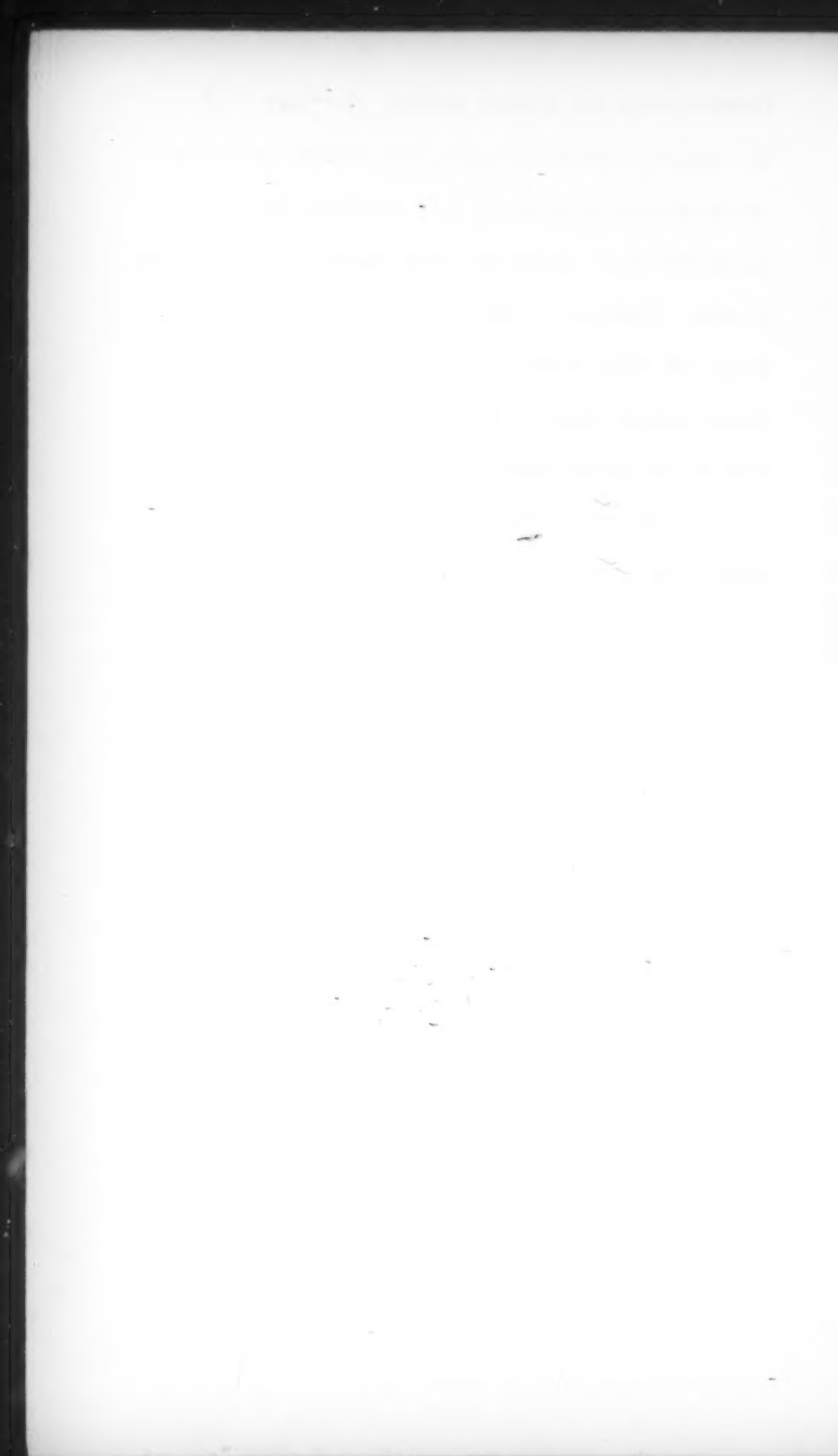
In July 1987, Woods encountered various personal problems that, according to Hudak, shattered his emotional equanimity. One day, in the offices that Woods and Hudak shared, a late Federal Express delivery sent Woods into a rage, and Hudak responded by calling in security guards to restrain Woods and by locking Woods out of the offices.

On July 15, 1987, Woods fired the opening salvo in an attempt to get even with Hudak: a petition in the Bankruptcy Court for the Western District of Pennsylvania seeking the involuntary

bankruptcy of Hudak under chapter 7.²
At first, Geisler advised Hudak on this
bankruptcy action. But within two weeks,
Geisler quit working for Hudak and joined
Woods' forces. Geisler took with him
most of the simple divorce and
bankruptcy cases while leaving some of
the more problematic ones in a file
behind Hudak's desk without notifying
Hudak of their whereabouts. Geisler then

2. The nominal petitioner was
Geraldine Woods, but the address listed
in the petition was the business office
of her husband. Further, Geraldine Woods
did not sign the actual petition filed
with the court. Moreover, Geraldine
Woods testified at trial that her husband
conducted all of his business affairs
under hr name, that she often did not
read the papers she signed, and that her
husband "handled everything."

The petition states that Woods'
claims amounted to "\$79,000 for amounts
due under various loans from Petitioner
to Debtor."



began representing Woods in actions against Hudak and his wife.³

Over the next few months, Woods feverishly executed a campaign of vilification against Hudak and his family. Woods warned his daughter that Hudak was a danger to her sons, mailing her books about Ted Bundy and other serial killers. He threatened to file and eventually did file suits against his daughter for such debts as parking tickets owed on the car he had given her. He made obscene names in public places, in particular in the state courts.

Woods also obtained, apparently from Geisler, lists of the many cases that Geisler was handling but on which Hudak was the attorney of record. Woods then hired Richard O'Brian to call many

³. Geisler is also representing O'Brian on this appeal.



of the clients to suggest that they complain to the Disciplinary Board about Hudak's handling of the cases. Woods also called Hudak's clients to inform them that Hudak's law firm was a fraud, that their money had been stolen, and that Hudak would soon be in jail.

Further testimony was offered by a process server about how Woods had beat him up when he attempted to serve Woods, and then offered through a third party to pay the process server \$500 a day if he would not testify as to the event.

Hudak responded with claims and counterclaims of his own. Most relevant here was the motion for a temporary restraining order he brought pro se against Woods, Geisler, and O'Brian on September 16, 1987. The motion was filed in the bankruptcy court as a response to Geraldine Woods' petition for invol-



untary bankruptcy. After hearing Hudak's position ex parte, Judge Rosenberg conducted a three-day hearing with Woods, Geisler, and O'Brian present and represented by counsel.

By his motion, Hudak sought to restrain Woods, Geisler, and O'Brian from continuing their interference with his business and with his personal life. In particular, Hudak sought to prevent Geisler from taking client files and lists of clients, from divulging privileged material pertaining to the cases that Hudak had been handling, and from revealing information about Hudak's defense to the involuntary bankruptcy action, deemed by Hudak to be privileged by virtue of Geisler's legal assistance of Hudak. Hudak also sought to halt Woods' contact with Hudak's clients.



At the close of the hearings, the parties drew up a proposed consent order that first provided that the motion for a temporary restraining order would be withdrawn for the bankruptcy court and "converted" to a motion for a preliminary injunction "with continuing jurisdiction before Judge Rosenberg in accordance with the law of injunction and the facts of the case." The order next set out how Geisler and Hudak would dispose of the remaining bankruptcy and divorce cases, including payment by Hudak to Geisler of filing fees and decree fees that were to be used "only for the purpose for which paid to him" App. at 72. Geisler was also to report to Hudak monthly to inform him of the progress being made on the outstanding cases. The order prohibited Geisler "and agents, servants, employees or associates thereof" from "further



contact with clients of Hudak for the purpose of discussing any alleged irregularities in the handling of cases or [from] otherwise interfer[ing] with the business of Hudak "except as necessary to dispose of the cases being handled by Geisler himself. App. at 74.

The order further prohibited contact between Woods and Hudak and O'Brian and Hudak, and provided that Woods and his associates and agents would be prohibited from contacting Hudak's clients. Contact between Woods and his daughter and grandchildren, however, was not prohibited, and the parties were allowed to pursue "any legal remedy for which [they would be] entitled under law." App. at 74. The proposed order was approved by Geisler, O'Brian, and Woods, and reviewed by Judge Rosenberg, who then incorporated it into an

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"injunctive order" filed by him on October 1, 1987. On November 30, Woods and Hudak agreed to a stipulated withdrawal of the bankruptcy petition.

On March 31 and April 8, 1988, Hudak brought two motions for contempt against Geisler, Woods, and O'Brian, citing violations of the terms of the consent order. Judge Rosenberg held five days of hearings on Hudak's charges. At the conclusion of the hearings, he held Woods, O'Brian, and Geisler in contempt.

The district judge found that, by several of his actions, Woods had violated the consent order by "contacting" Hudak and "contacting," through his agents, Hudak's clients for the purpose of interfering with Hudak's business. In particular, the judge resolved credibility conflicts between the testimony of Hudak and his witnesses



and the testimony of Woods' witnesses⁴ to find that Woods approached Hudak in an elevator in the Lawyers Building in Pittsburgh and proceeded to grab Hudak's nose and repeatedly call him a "rapist." The judge also gave credence to the testimony of a receptionist in the building containing Hudak's offices, Maryann Lampl, that persons identifying themselves as clients of Hudak would call, complaining about the status of their cases and that at least one of them stated that Woods had told them to call Hudak and had given them the number of an office near Hudak's.⁵ Lampl further testified that a person identifying

4. Woods did not testify at the hearings, although he was present and was repeatedly chastised by Judge Rosenberg for his disruptive behavior during the proceedings.

5. No hearsay objection was made to any of this testimony.

January 18th 1878 to January 25th 1878

Dear Mr. [Name] I have the honor to acknowledge the receipt of your letter of the 17th inst.

and in reply to inform you that the same has been forwarded to the proper authorities for their consideration.

I am, Sir, very respectfully, Sir, your obedient servant,

[Signature]

[Name]

[Address]

[City]

[State]

[Country]

[Post Office]

[Telegraph Office]

[Telephone Office]

[Railway Office]

[Steamship Office]

[Maritime Office]

[Agriculture Office]

[Manufactures Office]

[Commerce Office]

[Finance Office]

[Justice Office]

[Education Office]

[Public Works Office]

[Health Office]

[Police Office]

[Fire Office]

himself as Woods called, attempting to contact Hudak and referring to Hudak as the "rat." App. at 732.

The judge also resolved competing accounts of an incident outside a Common Pleas courtroom in favor of Hudak. Judge Rosenberg found that Woods approached Hudak and called him a "fucking pig face," that Hudak made a comment about Woods' mistress, that Woods then spat in Hudak's face, and that Hudak then struck Woods.

Regarding the contact of Hudak's clients through agents of Woods, Anthony Guida, an attorney at the Pittsburgh law firm of Buchanan Ingersoll, gave uncontradicted testimony that in January 1988 a person identifying himself as Richard O'Brian and as a disgruntled client of Hudak's called him several times, complained about the work Hudak had done



on his divorce, and suggested that Guida contact Hudak at a certain address. The judge also found credible the testimony of Hudak's wife, Sharon Lavelle, that she received forty calls from Hudak's clients after October 1987 on the Hudaks' unlisted number.

In addition, the judge found that Geisler had violated certain provisions of the consent order. Geisler himself conceded that instead of using all of the \$10,317 give him by Hudak, pursuant to the consent order, for filing fees and decree fees, he had used some of it for his various office expenses. The judge also found that Geisler had failed to report to Hudak in accordance with the consent order. Finally, the judge found that it was not possible on the record before him to determine the status of all the cases acquired by Hudak and Geisler



before the rift, and that the matter required further study.

Judge Rosenberg's order provided for the appointment of a master to help expedite the resolution of the outstanding cases and to aid in the district court's supervision of its purgation requirements. The order further provided the following:

1. The defendants shall cease and desist from molesting in every possible way . . . Joseph E. Hudak, directly or indirectly.

2. The defendants are required to withhold the transmittal of any communications, statements, mouthings, gossip or references regarding Hudak to any and all persons except by special permission of this court.

3. The defendants, Woods, Geisler and O'Brien, and any other of their agents, servants or employees, shall cooperate with the Master and shall immediately separate themselves completely, under the supervision of the Master, from all business matters except as otherwise permitted by the Master.



* * *

6. Geisler shall and is required to act as counsel on all Hudak bankruptcy and divorce cases turned over to him pursuant to the injunctive order, and those which he personally procur[ed] or which may be assigned to him by the Master, excepting only those cases for which he may be relieved by this court.

7. Woods shall file, within 10 days of the date of this Order, a complete listing of all of his assets which he holds either personally or jointly with any other person or corporation, showing for each such asset the nature and extent of his holding, including, but not limited to, all holdings under veil or pseudonym names (sic).

8. Within 15 days of this order Woods shall deposit with the Clerk of Court the sum of \$10,000, in cash or certified funds. This fund shall be used for the purposes of providing costs and expenses for those cases requiring filing costs and other litigation expenses as well as for the payment of the costs and fees of any substitute counsel appointed by the court or the Master on any of the Hudak bankruptcy or divorce cases and for the payment of the Master's fees and expenses. Woods shall provide necessary funds to maintain or replenish this account to the



level of \$10,000 at all times by supplying such funds to the Clerk of Court [] in cash or certified form within 24 hours of any notice of any court or Master, approved expenditure from the said fund, but this shall not relieve Woods of any obligation to independently assess the fund and keep it replenished to the level of \$10[,]000.

9. Woods shall provide all the funds necessary except for those which Geisler shall be directed to provide for furthering all the divorce and bankruptcy cases to their completion. Such amounts shall be presented for payment of such expenses through the Clerk of Court and shall be paid only upon approval of this court after recommendation of the Master.

10. Geisler shall also provide immediate and specified funds as required by the Master in his discretion as such funds may be necessary for the completion of the bankruptcy and divorce matters.

App. at 10-13

The order also provided that Hudak was to make a detailed accounting of all "the cases and monies turned over to Geisler" pursuant to the October 1, 1987 order. App. at 11. Geisler was to



make monthly reports to the master regarding the status of those cases. Finally, the order provided for the parties to submit complaints about failures to comply with the Court's order to the Master, who would then conduct an evidentiary hearing if "necessary" for the preparation of a written report that was to be submitted to the district judge.

II.

We first address Appellants' challenge to the district court's jurisdiction over Hudak's motions charging appellants with contempt. In essence, appellants argue that, since Hudak's motion for a temporary restraining order could be brought in



federal court solely on account of the pending bankruptcy proceeding, once that proceeding ended the district court's jurisdiction ended as well.

To set this discussion in the proper analytical context, we begin by examining the district court's jurisdiction to hear Hudak's September 16, 1987 motion for a temporary restraining order.

Because Hudak's motion did not allege diversity of citizenship or the violation of any federal law, the jurisdiction of the district court was governed by 28 U.S.C. Section 1334.⁶ Since Hudak's motion was not "under"

⁶. None of the parties argues that the district court's withdrawal of the reference to the bankruptcy court of Hudak's motion was an abuse of discretion under 28 U.S.C. Section 157 (d). Compare In re Lion Group, 48 B.R. 329, 336-38 (S.D.N.Y. 1985).



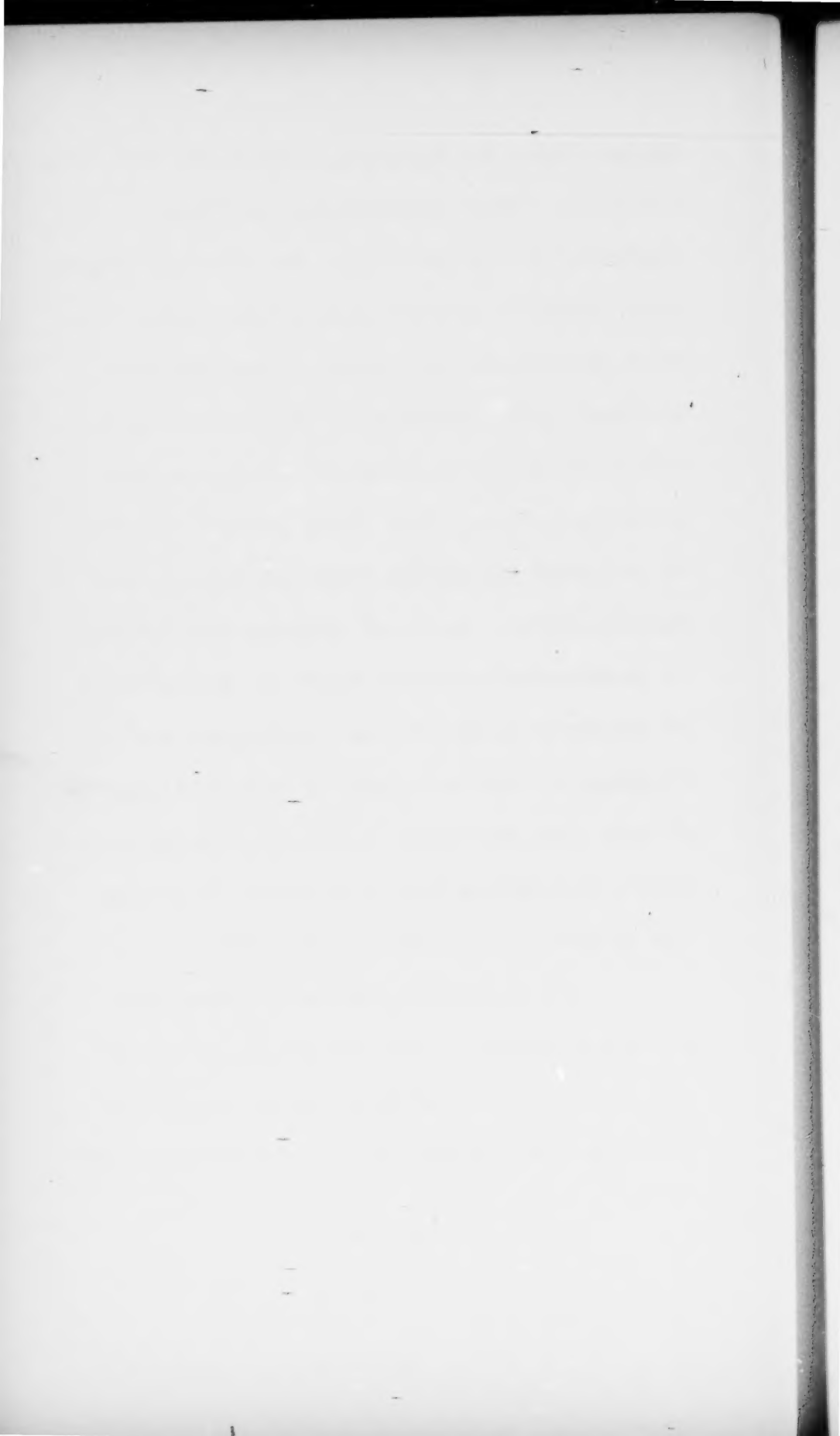
title 11, see Section 1334 (a), the applicable subsection is Section 1334 (b), which provides that "the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." A recent pronouncement from this court makes it clear that the district court had "related to" jurisdiction over Hudak's motion:

The usual articulation of the test for determining whether a civil proceeding is related to bankruptcy is whether the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy. Thus, the proceeding need not necessarily be against the debtor or against the debtor's property. An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate.

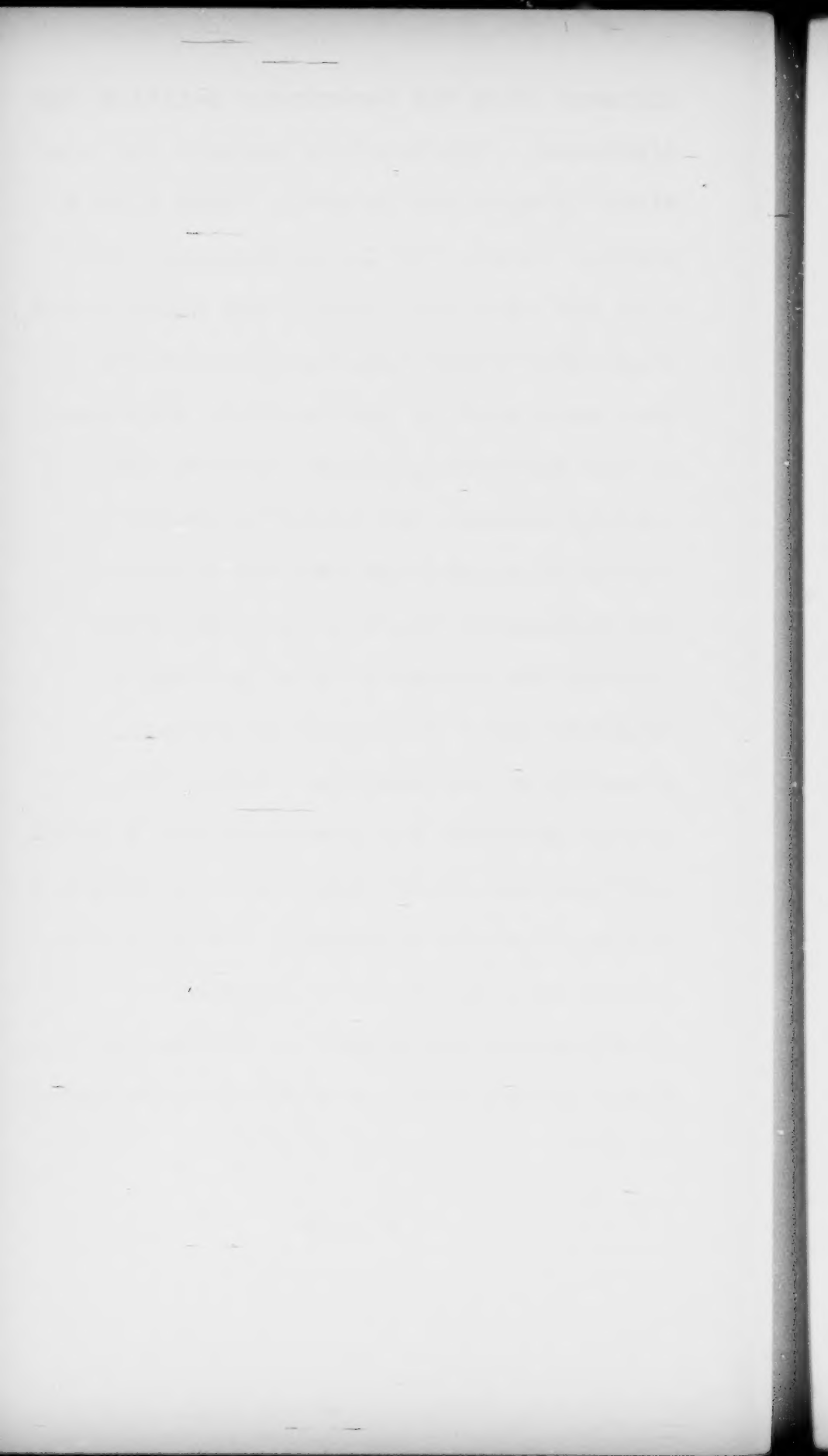


Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3d Cir. 1984) (citations omitted, emphasis in original). We have no doubt that Hudak's motion qualifies under the test announced in Pacor. The motion alleged interference by Woods, Geisler, and O'Brian with Hudak's business and personal life. The defendants' scheme, as alleged by Hudak, was to ruin Hudak financially. Ruin of Hudak--the debtor in possession--would mean an alteration of Hudak's liabilities, options, and freedom of action, and it would directly affect the bankrupt estate. The district court therefore had the power to enter its order of September 30, 1987.

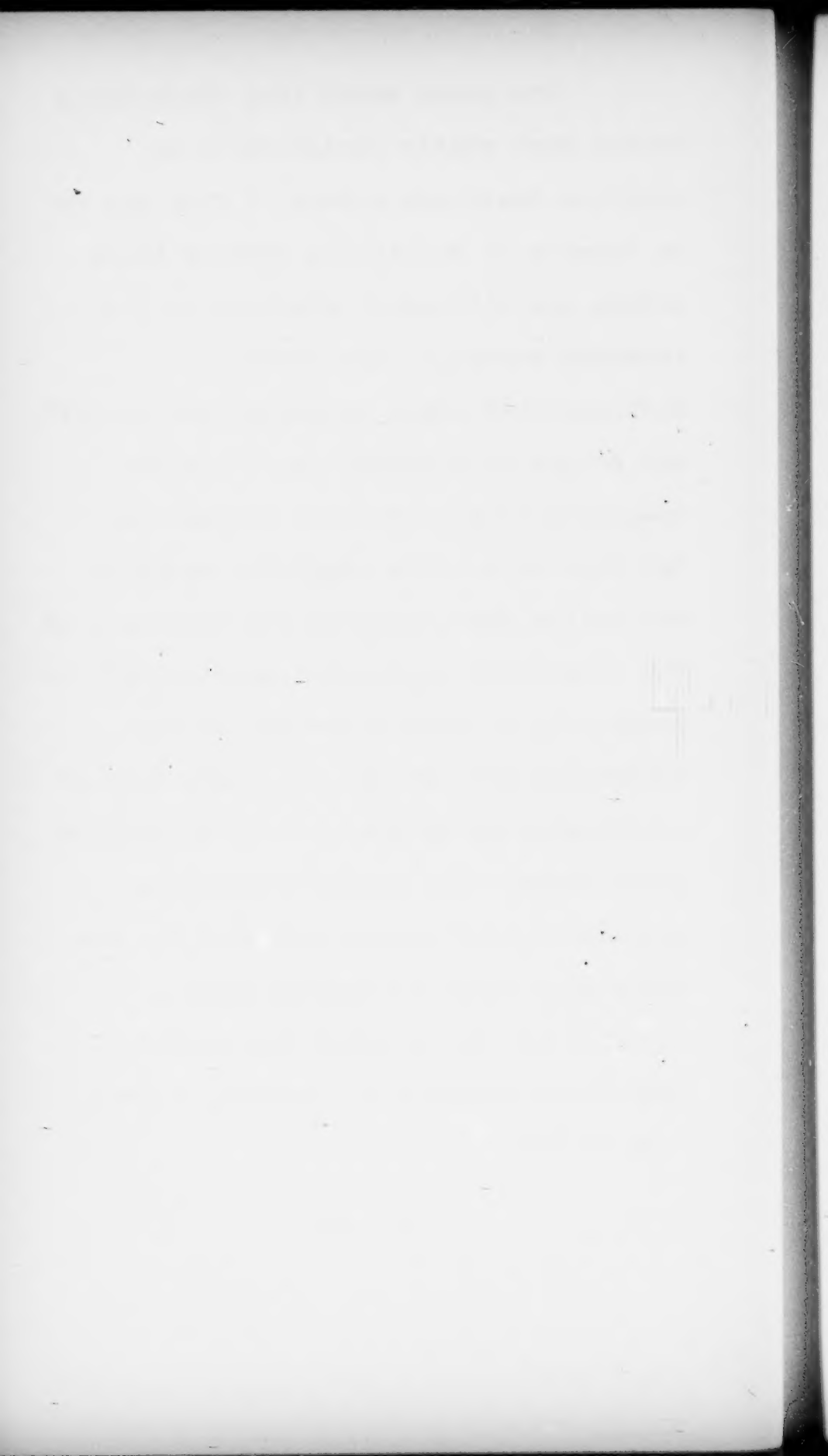
We consider, then whether the district court's jurisdiction to enter its order entailed the jurisdiction to enforce that order by citing parties for



contempt once the bankruptcy petition was dismissed. The Court of Appeals for the Ninth Circuit was recently faced with a similar issue. In In re Franklin, 802 F.2d 324 (9th Cir. 1986), the debtors had repeatedly filed bankruptcy petitions that were each in turn quickly dismissed by the bankruptcy court. During the interim between the debtor's second filing of a petition and its dismissal, the bankruptcy court entered an order lifting the automatic stay so that a creditor could foreclose on certain property of the debtors. After the second petition was dismissed and a third petition was filed, the creditor sought a ruling from the bankruptcy court in the nature of a declaratory judgment interpreting the effect of the prior order on the creditor's foreclosure sale.



The court noted that "bankruptcy courts must retain jurisdiction to construe their own orders if they are to be capable of monitoring whether those orders are ultimately executed in the intended manner." The court distinguished cases in which "new relief" was sought by a party, requiring the reopening of a bankruptcy proceeding: "In this case, (the creditor) seeks no new relief that requires the reopening of the underlying bankruptcy proceeding. It seeks only an interpretation of the bankruptcy proceeding. It seeks only an interpretation of the bankruptcy court's prior order. The second bankruptcy proceeding need not be reopened for the bankruptcy court to declare (the creditor's) rights after the second bankruptcy petition's dismissal." 802 F.2d at 327.



Although this appeal involves the enforcement of an order through contempt, the principle underlying Franklin controls here. Once a court has issued an order, it would be wasteful and detrimental to that court's authority for the court to be powerless to enforce its prior order. Such impotence would mean that the court would be forced to dismiss all pending "related to" and "arising in" claims when a bankruptcy petition is dismissed, lest it waste its time deliberating over further, unenforceable decisions. If such were the rule, the district court would in effect possess only a kind of "conditional" jurisdiction under Section 1344; a jurisdiction conditioned on the nondismissal of the bankruptcy proceeding. We find nothing in the Bankruptcy Code that suggest such a result.



The situation here is not unlike that which occurs when a district court retains a state-law, pendent claim after the federal claim--the original basis for the district court's jurisdiction--has been dismissed. In such a case, we have ruled that the district court has the power and discretion to retain jurisdiction over the pending pendent claim--even when no order on that state-law claim has been entered. See Nationwide Mutual Fire Ins. v. T & D Cottage Auto, 705 F.2d 685, 687-88 (3d Cir. 1983). This rule, of course, applies with greater force where a court has already entered an order. In such a case, the court and the parties have invested greater resources in resolving the issue, and voiding the court's order would often mean relitigating the same matter. Further, the need for the court



to protect its integrity through exercise of its contempt powers is greater when it must safeguard the effect of its decree than when no ruling has been issued.

III.

We next consider whether the district court's findings that Geisler, O'Brian, and Woods violated the consent order were clearly erroneous. See United States v. Charmer Industries, Inc., 722 F.2d 1073, 1078-79 (2d Cir. 1983). We note at the outset that a district court need not find that a party's violation of an order was willful in order to find that party in contempt. See E.E.O.C. v. Local 638 . . . Local 28 of Sheet Metal Worker, 753 F.2d 1172, 1178 (2d Cir. 1985).



Regarding Geisler, we have already noted that he has conceded that he used the funds given him by Hudak for purposes other than filing fees and decree fees. Geisler contends, however, that the order "did not expressly limit him to using those funds for court costs." Br. of Geisler at 8. We find this position to be meritless. The order, by stating that Geisler was to use the funds received from Hudak only "for the purpose for which paid to him," can only mean that Geisler was to allocate amounts given to him in accord with the reason underlying the calculation of those amounts. Thus, for example, amounts given for filing fees should have been spent only on filing fees.

The judge's finding that Geisler did not report to Hudak in accord with the consent order is also well supported



by the record. Geisler's only argument here, an argument made during the hearing but abandoned on appeal, is that he had trouble finding Hudak. Such an assertion is highly suspect given Geisler's association with Woods and Woods' knowledge of Hudak's unlisted phone number and of the location of his home, as well as Geisler's legal representation of O'Brian and O'Brian's knowledge of Hudak's whereabouts. The judge was thus entitled to disbelieve Geisler's account of his attempts to find Hudak.

As for Woods, the judge's findings again rested upon credibility determinations, the bases for which he articulated thoroughly. On the basis of the testimony in the record, the judge could reasonably find that Woods had contacted Hudak several times, in violation of Paragraph 13 of the consent



order, and the judge could draw an inference from the testimony that Woods himself or through his agents contacted clients of Hudak to interfere in Hudak's business, in violation of Paragraph 11. Similarly, the district judge's conclusion that O'Brian interfered with Hudak's business by contacting Hudak's creditors was a reasonable one.

IV.

Finally, we turn to the scope of the purgation order. We note that civil contempt is remedial in nature, a means of obtaining compliance with a court order that a district court finds to have been violated. See United States v. Powers, 629 F.2d 619, 627 (9th Cir. 1980). A district court has broad discretion in fashioning a purgation



order; indeed, the court can require the contemnor to take action not required in the original order. See In re Arthur Treacher's Franchisee Litigation, 689 F.2d 1150, 1159 (3d Cir. 1982). That discretion is not unlimited, however. The requirements of the purgation order must be designed to "grant the relief that is necessary to effect compliance" with the underlying, disobeyed order. McComb v. Jacksonville Paper Co., 336 U.S. 187, 193-94 (1949). Further, the purgation order, like the underlying order, is unenforceable if it is couched in vague terms. See Vertex Distributing v. Falcon Foam Plastics, Inc., 689 F.2d 885, 889 (9th Cir. 1982).

Applying these precepts to this case, we find several provisions to be broader than is appropriate to obtain compliance with the consent order.

Paragraph 2's proscription against making any statements about Hudak to anyone without prior approval of the court would include true statements and untrue ones, harmful statements and innocuous ones. The consent order was not intended to insulate Hudak from all criticism, or even to give him special protection against libel and slander by subjecting the appellants to prior restraints. Thus, the purgation order's prohibition against all mention of Hudak is not tailored to the effectuation of the consent order; it would give Hudak rights in addition to those embodied in the consent order. See Collins on behalf of Collins v. Barry, 841 F.2d 1297, 1300 (6th Cir. 1988) (purpose of civil contempt is not to create additional rights). The specific speech-related harms contemplated and addressed in the



consent order--contact by Woods and his agents with Hudak and with Hudak's clients--would be adequately dealt with by a reiteration of those prohibitions in the purgation order. Accordingly, the district judge should delete Paragraph 2 of the December 22, 1988 order and incorporate paragraphs 11 and 13 of the October 1987 order into the order he issues on remand.

We also find the latter portion of Paragraph 3, requiring Geisler, Woods, and O'Brian to "immediately separate themselves completely, under the supervision of the Master, from all business matters except as otherwise permitted by the Master," App. at 11, to exceed the scope of the consent order. The record does not support the notion that Hudak's travails stemmed from business dealings among the three



defendants. The campaign by Woods and O'Brian against Hudak was motivated by personal, not business, reasons, even though that campaign did affect Hudak's business. Nothing in the hearings held before or after the consent order suggest that business agreements among the defendants were the vehicle by which the campaign was carried out. Thus, this provision would not prevent a continuation of the objectionable activities by Woods, Geisler, and O'Brian, while it would prohibit legitimate dealings among the three. The provision therefore exceeds the scope of the consent order and we will direct the district court to delete it from the purgation order.⁷ The

⁷. Woods and Geisler object to Paragraphs 2,3, and 7 on the ground that they infringe on the appellants' first-amendment rights. Because we find the inclusion of those paragraphs in the purgation order to constitute an abuse of discretion, we decline to reach the



district court should retain that portion of Paragraph 3 requiring Woods, Geisler, and O'Brian to cooperate with the Master, since such cooperation is necessary for the effectuation of the original consent order and since appellants do not appear to object to that provision.

We note further that Paragraph 7, requiring Woods to file a complete listing of all of his assets, would not further compliance with the consent order. There is no indication in the record that Woods' financial status was a cause either of the pre-consent-order problems or of his subsequent failure to comply with that order. Nor is financial disclosure warranted by the provision in Paragraph 8 that Woods contribute to a fund. If, in the future, Woods objects

constitutional issue.



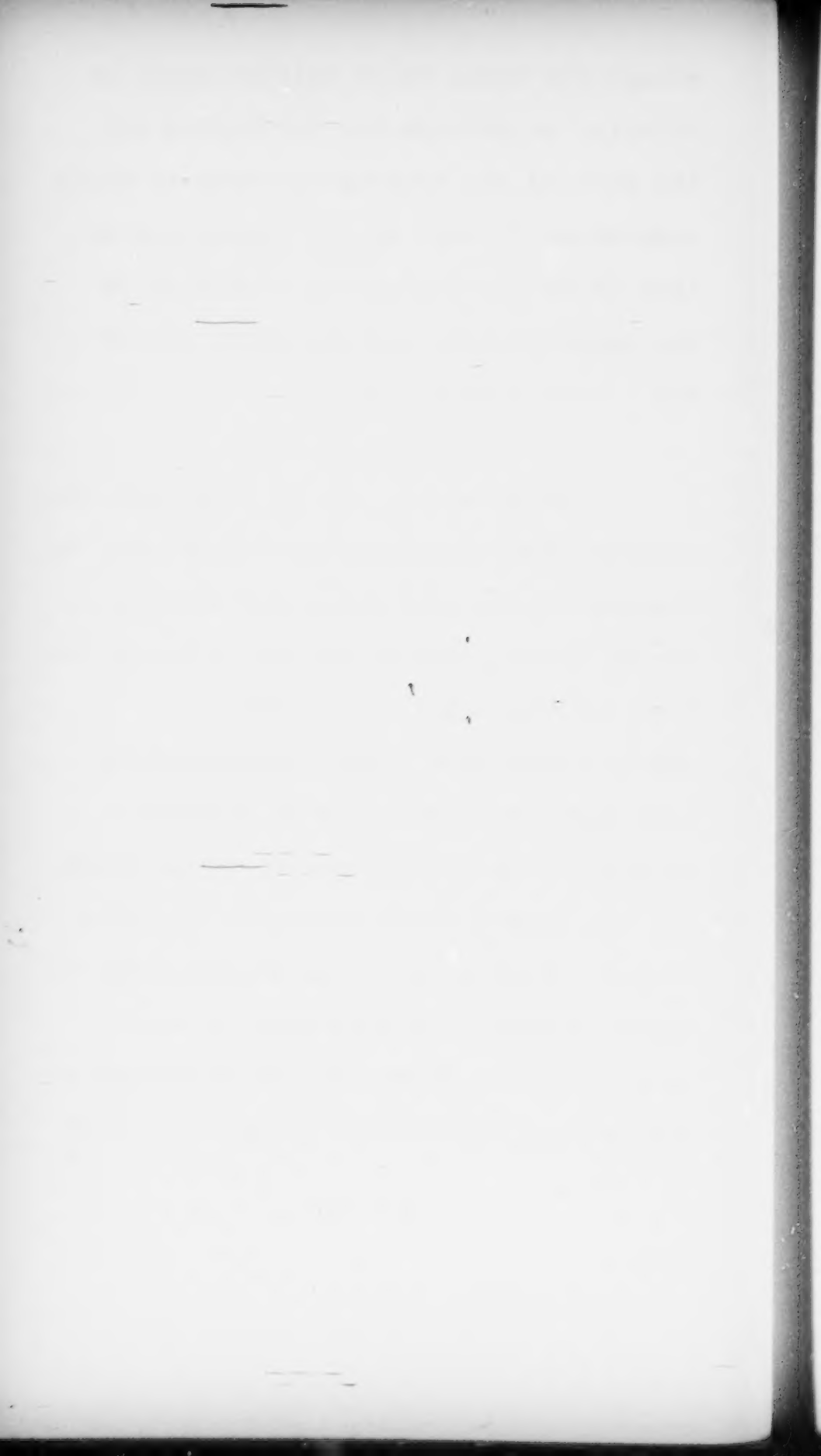
to contribution on the ground that he is unable to pay, then the court may require that Woods prove that inability through disclosure of his financial condition. See O'Leary v. Moyer's Landfill, Inc., 536 F. Supp. 218, 219-20 (E.D. Pa. 1982) (Pollak, J.). For now, Woods' financial condition appears to be irrelevant to his conduct in violation of the consent order and disclosure at this time will not further compliance. Paragraph 7 should therefore be deleted.

Woods objects to Paragraph 8, which requires him to deposit \$10,000 with the court-appointed master to cover litigation expenses, presumably related to the bankruptcy and divorce cases, and to Paragraph 9, which requires to the bankruptcy and divorce cases, and to Paragraph 9, which requires Woods to "provide all of the funds necessary



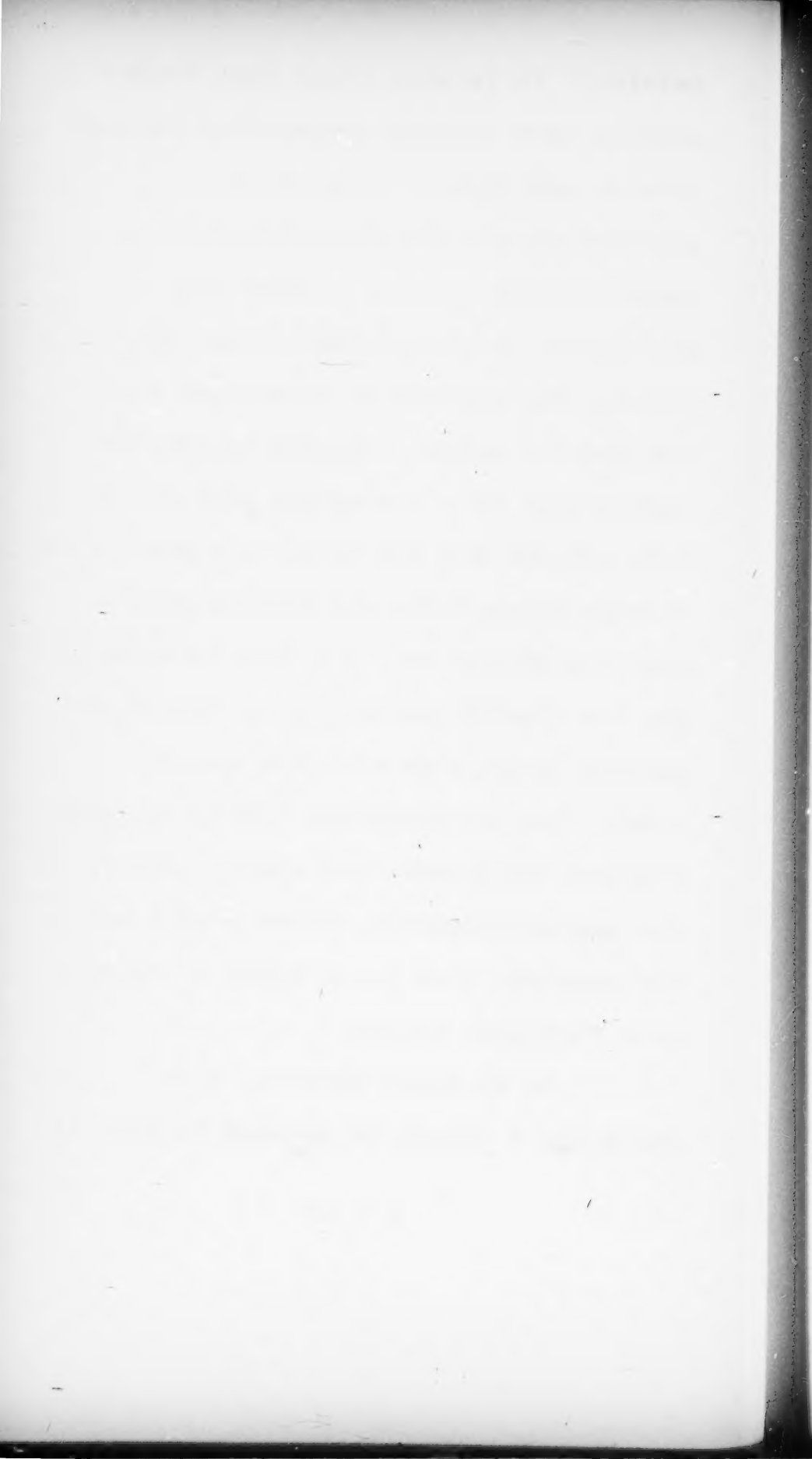
except for those which Geisler shall be directed to provide for furthering all the divorce and bankruptcy cases to their completion." App. at 13. Woods argues that these provisions are unrelated to the consent order and therefore exceed the court's authority.

We disagree. It is true that the consent order required Geisler quickly to dispose of the bankruptcy and divorce cases, using funds given him by Hudak for that purpose. But the record demonstrates that Woods' intermeddling with Hudak's clients had an adverse effect on the disposition of those cases. For one thing, Woods continual flouting of the contempt order has sapped Hudak of money, energy, and time that he would otherwise have expended upon disposing of the backlog of cases in cooperation with



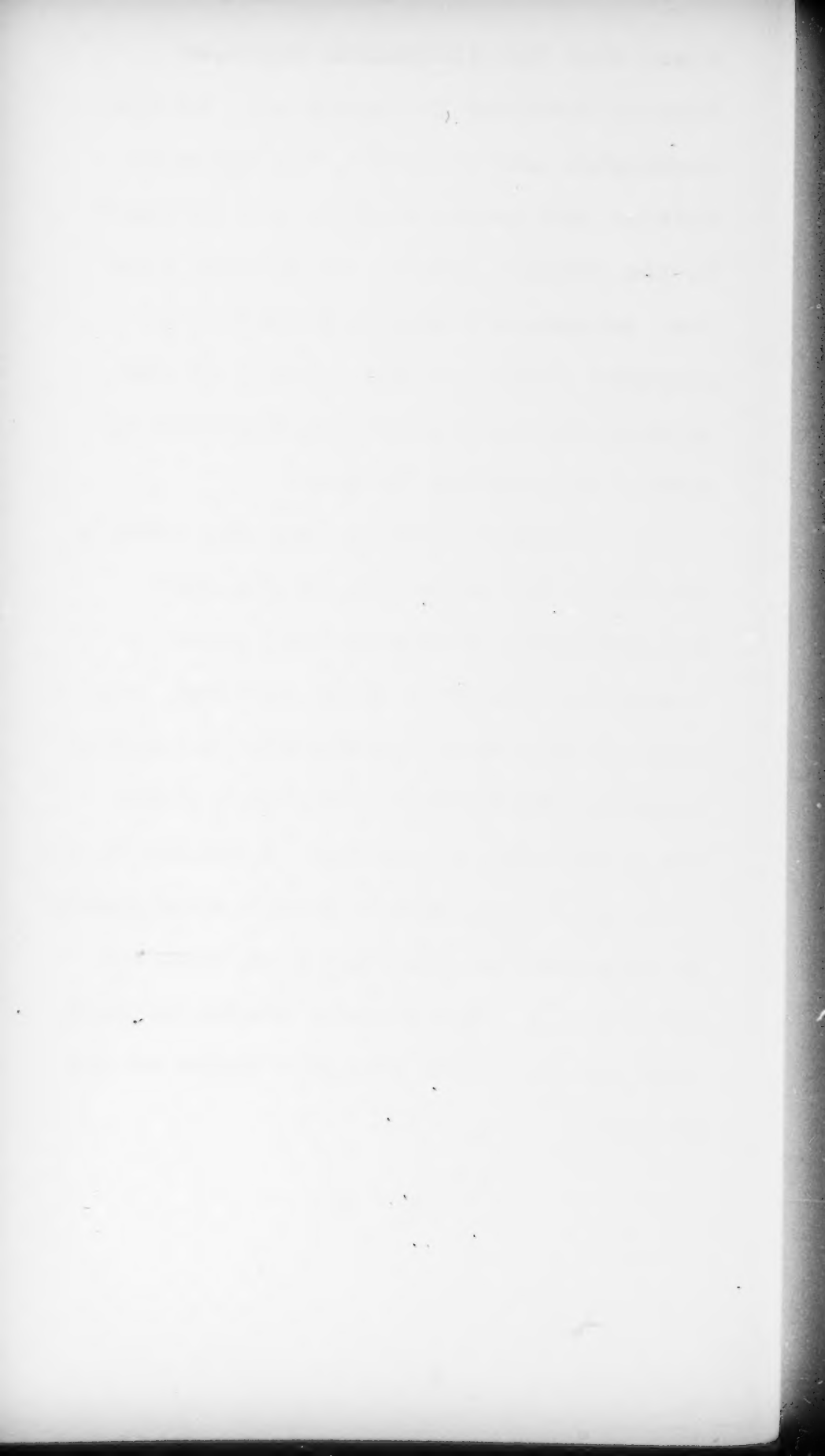
Geisler, It is also clear that Woods' actions have impeded cooperation between Geisler and Hudak. Thus it is appropriate for the district court to require Woods to help further the provisions of the contempt order by putting the \$10,000 in an account with the special master, thereby aiding the restoration of a status quo that would have existed but for Woods' contempt. It is also appropriate for the district court to direct that the fund be used to pay the special master in his effort to achieve compliance with the consent order. Having conducted himself in such a manner as to make the appointment of the master necessary, Woods should not now complain that he is being asked to help fund that master.

We do note, however, that paragraph 8 should be amended to make it



clear that the litigation expenses therein referred to relate only to the bankruptcy and divorce cases taken by Geisler and handed over to him pursuant to the consent order. We further find that paragraph 8 should provide that whatever funds, if any, remain in the account when the cases are disposed of should be returned to Woods.

Geisler objects that the order's provision for reporting on the past actions taken on the divorce cases is "inappropriate in a civil contempt case." Geisler advocates current-status reports instead. We think the district judge was within his discretion in requiring a history of each case. Such a requirement is necessary to sort out with accuracy and certainty the current status of each case and to ensure the good faith of the parties.



Geisler does not object to paragraphs 5, 6, and 10 and we therefore will allow those provisions to stand. The appellants do not object to the appointment of the master, not to Paragraph 1 or paragraphs 11 through 17, and we therefore allow those paragraphs to stand.

IV.

We will affirm the district court's contempt order of December 22, 1988. On remand, the district court should modify that order in accord with the appendix to this opinion. Such order shall be subject to modifications by the district court in the event of changed circumstances. The mandate will issue forthwith.



TO THE CLERK:

Please file the foregoing not for
publication opinion.

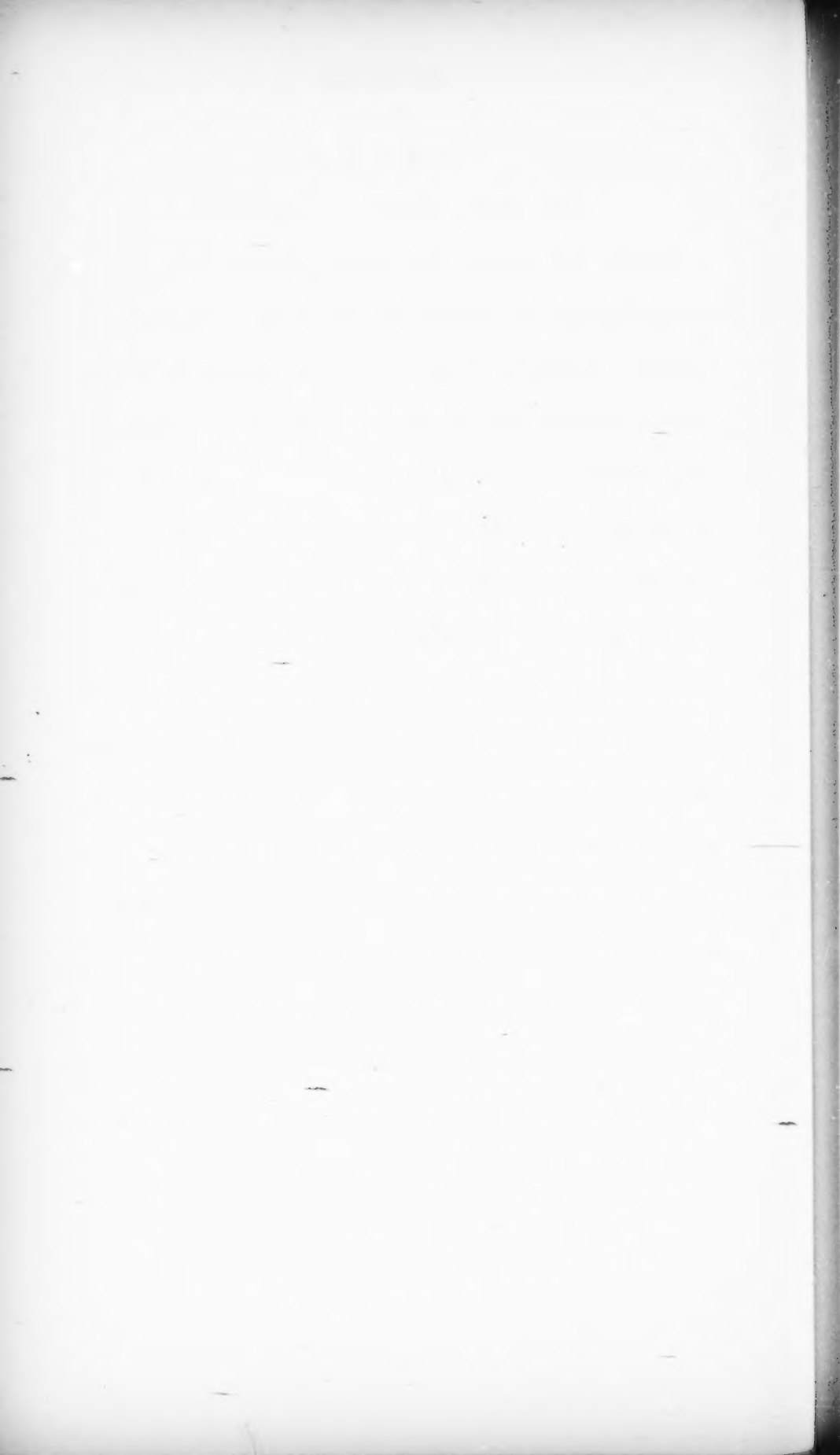
/s/ Walter K. Stapleton,
Circuit Judge



APPENDIX

ORDER

AND NOW, this day of
 , 1989, in order to facilitate the
compliance of Michael Geisler, Joseph
Hudak, Robert Woods, and Richard O'Brian
(also known as Richard O'Brien) ("the
parties") with this court's order of
October 30, 1987 (hereinafter "the
injunctive order") and with this order,
it is hereby ORDERED that Robert L.
Federline, Esquire be appointed as a
Master by this court pursuant to Federal
Rule of Civil Procedure 53. The Master
shall have the authority and duty of
supervising compliance with this order
and the October 30, 1987 order and
reporting on compliance to this court.
The Master shall be sworn by the court to
perform the duties delegated to him by
this order and by the court.



The following is further ORDERED with notice that any party who fails to comply with the following may be held in contempt of this court and subject to appropriate sanctions, including fines and imprisonment:

1. The defendants--Woods, Geisler, and O'Brian--shall cease and desist from molesting, directly or indirectly, Joseph E. Hudak.

2. The defendants--Woods, Geisler, and O'Brian--shall cooperate with the Master.

3. Hudak shall within 5 days provide to the Master a complete accounting of all cases and monies turned over to Geisler pursuant to the injunctive order, and Geisler shall present to the Master, within 10 days of the date of this Order, a complete accounting of all divorce and bankruptcy



files which he removed from the Hudak offices and those cases turned over to him for completion pursuant to the injunctive order (collectively hereafter referred to as the "Hudak divorce and bankruptcy cases"), specifying for each case:

- a. The name of the client;
- b. The mater being handled on behalf of the client;
- c. The date that the case was accepted from the client;
- d. The complete itemization of all steps already taken on behalf of such client;
- e. A complete specification of all work remaining in such case to prosecute it to completion;
- f. A complete accounting of any and all monies received from any and all sources by Geisler;



g. A complete accounting by Geisler of all monies received by him for bankruptcy proceedings; and

h. A complete accounting of any and all monies disbursed by him.

4. Geisler shall thereafter provide monthly reports to the Master of the circumstances and financial status of each Hudak bankruptcy and divorce case until its final conclusion or until such time when he is relieved of such a case by this court or the Master.

5. Geisler shall act as counsel on all Hudak bankruptcy and divorce cases turned over to him pursuant to the injunctive order, and those which he personally procured or which may be assigned to him by the Master, excepting only those cases of which he may be relieved by this court.

6. Within 15 days of the date of this order Woods shall deposit with the Clerk of Court the sum of \$10,000, in cash or certified funds. The fund shall be used for costs and expenses for those of the Hudak bankruptcy and divorce cases requiring filing costs and other litigation expenses as well as for the payment of the costs and fees of any substitute counsel appointed by the court or the Master of any of the Hudak bankruptcy or divorce cases and for the payment of the Master's fees and expenses. Woods shall provide necessary funds to maintain or replenish this account at the level of \$10,000 at all times by supplying such funds to the Clerk of Court in cash or certified form within 24 hours of notice of this court or of the Master. Any funds remaining

THE HISTORY OF THE
CITY OF BOSTON
FROM THE FIRST SETTLEMENT
TO THE PRESENT TIME
IN TWO VOLUMES
BY NATHANIEL BENTLEY
OF THE BARR

when these costs and expenses have been paid shall be returned to Woods.

7. Woods shall provide all the funds necessary for the Hudak bankruptcy and divorce cases except for those which Geisler shall be directed to provide for furthering all the cases to their completion. Such amounts shall be presented for payment of such expenses to the Clerk of Court and shall be paid only upon approval of this court after recommendation of the Master.

8. The parties are reminded of the contents of paragraph 11 and 13 of the injunctive order:

11. Woods and O'Brian, and agents, servants, employees or associates thereof, shall have no further contact whatsoever with the clients of Hudak for the purpose of those clients' legal matters and shall in no way



engage in the practice of law or otherwise interfere with the business of Hudak.

13. Woods, and agents, servants, employees or associates thereof, shall have no further contact with Hudak, except to discuss legal matters which Hudak has handled for Woods or the wife of Woods.

Failure to comply with these provisions may result in sanctions against the noncomplying party.

9. If, at any time, any party reasonably believes that there has been a failure to comply with, or contempt of, this Order or of the injunctive order, such party shall submit, in writing and in detail, his reasons in support of such allegations to the Master. All such communications with the Master by the parties shall be in writing.



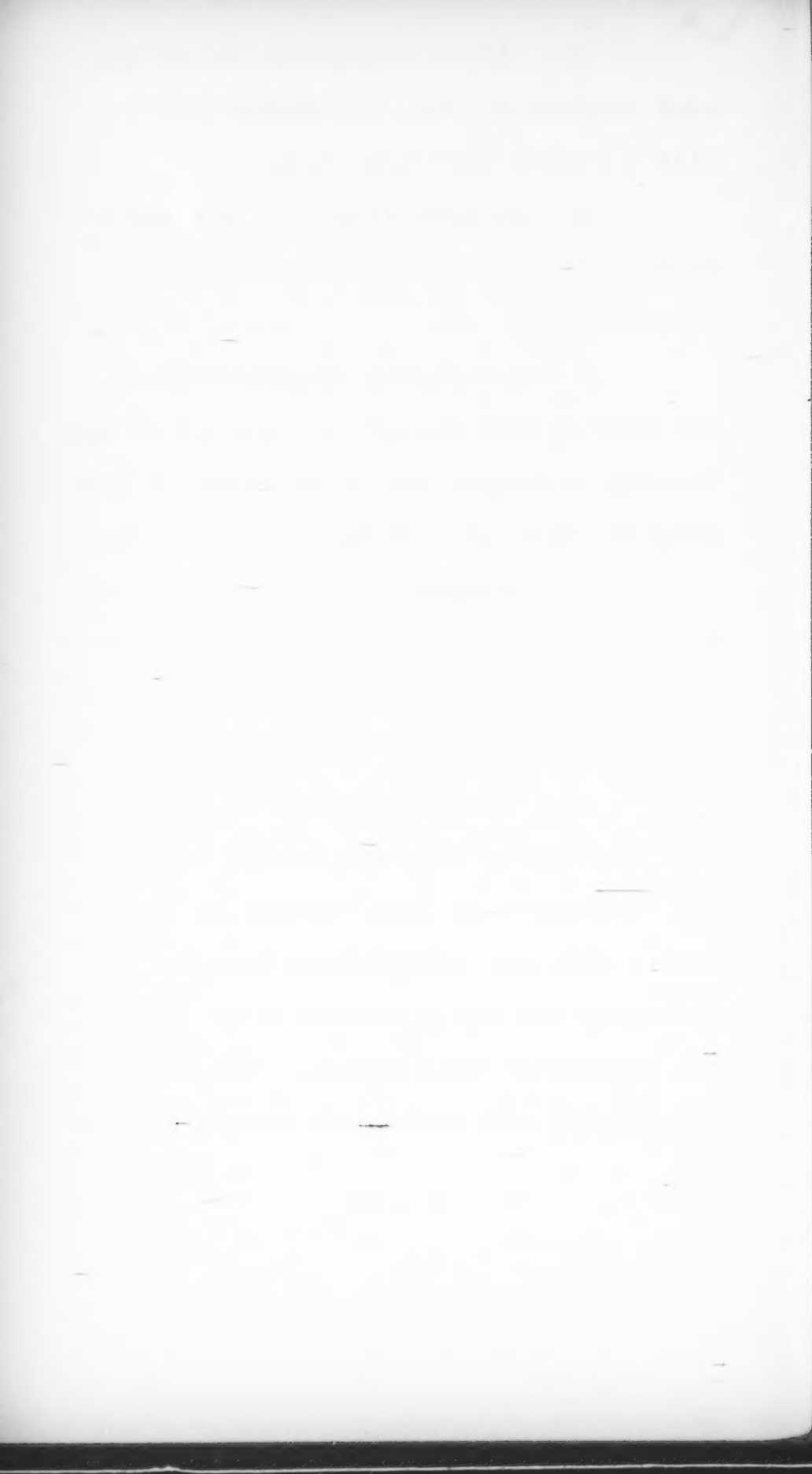
10. After consideration of any such communications, the Master shall file a report that may include;

a. Recommending that any party be held in contempt, and the reasons therefore;

b. Specifying recommendations for appropriate relief as a result of any failure to comply with this order or any actions taken in contempt of this order;

c. Recommending the removal of counsel or substitution of counsel on any of the bankruptcy or divorce matters under the supervision of the Master.

11. For the purpose of making such recommendation, the Master may, at his discretion or upon request of a party, hold any evidentiary hearing necessary for the preparation of any of his reports in this matter. The Master may require the production before him of



evidence upon all matters embrace in this order of reference, including, but not limited to the production of all books, papers, vouchers, documents and writings applicable thereof. The Master may rule upon the admissibility of any evidence before him and shall have the authority to put witnesses under oath and may examine them and shall have the power to summon or subpoena the parties to the action and examine them after putting them under oath. When a party so requests, the Master shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in the Federal Rules of Evidence for a court sitting without a jury.

12. After filing the report required by Paragraph 10, the Master shall file subsequent reports for the



purpose of updating the court on the status of these matters, which reports shall be filed not more than 60 days following the immediately preceding report.

13. The Master shall file such other reports as the court shall hereafter direct.

14. The rate of compensation for the Master appointed hereunder shall be \$95.00 per hour. Such compensation shall be payable only upon approval of this court after application of the Master duly filed, such application not being filed more frequently than once every 45 days. This application shall include:

a. A chronological listing of time and services performed by the Master;

b. The total amount of compensation requested;



c. The date and amount of previous compensation paid to the Master, if any.

15. As a part of each report the Master shall also show an accounting of all trust funds held by the Clerk of Court throughout such period, itemizing all expenditures and receipts.

16. In the event the Master is required to expend any sums for the purpose of compelling attendance of witnesses at hearings, for payment of court reporter expenses or otherwise directly related to his duties as a Master hereunder, he is authorized to expend such funds directly from the trust fund created herein without first seeking approval of this court.

United States District Judge



IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JOSEPH E. HUDAK,
Plaintiff,

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v. CIVIL ACTION NO. 87-1999

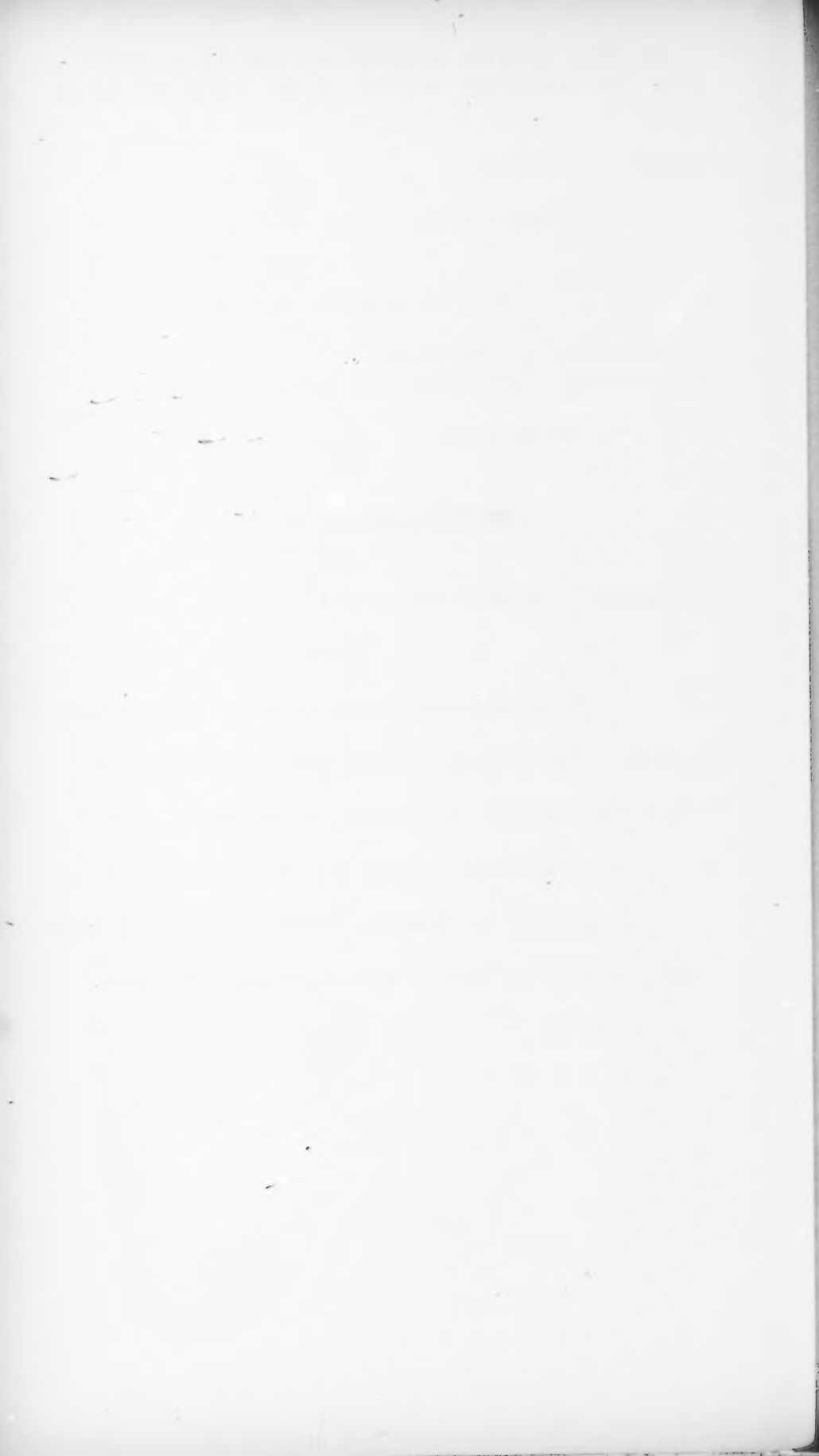
ROBERT WOODS, MICHAEL S.
GEISLER and RICHARD OBRIAN,
Defendant.

)
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MEMORANDUM OPINION

ROSENBERG, DISTRICT JUDGE

This matter came before the court on a Motion for a Temporary Restraining Order by Joseph E. Hudak ("Hudak"), an attorney, pro se, against various persons including Robert Woods ("Woods"), Richard O'Brien ("O'Brien") and Michael Geisler ("Geisler").



In his action, Hudak's evidence is that he was a sole practitioner who had begun a law practice a year ago; that He has procured approximately 1,000 clients mainly through advertising; that he borrowed \$50,000 from Woods; that he made arrangements with certain lawyers to handle the cases which consist mostly of bankruptcy and divorce matters; that he charged the fees, set up the office, retained an office staff and relied almost entirely for the actual functioning of the work upon the lawyers whom he retained on a specific payment basis; that he agreed to pay Geisler seven percent (7%) of the fees procured in his cases; that the cases came to him from various parts of the country; that he entered into certain dealings with Woods; that he gave Woods office space and they shared a common file room; that



he relied upon Woods for many legal contacts or that Woods assumed legal contacts under the circumstances of various cases; that he became the fiance' to Woods' daughter; that Woods objected strenuously and physically to such a relationship; that Woods maligned him and that fisticuffs occurred because of minor legal process servings in related matters; that thereafter Geisler left his employ and made connections with Woods and took with him without Hudak's permission a certain number of case files; that Woods took certain records from Hudak's office and that Woods used these records to make telephone calls and to employ Richard O'Brien to make telephone calls to various clients of Hudak inquiring about their satisfaction of dissatisfaction with Hudak and where dissatisfied advising grievance committee



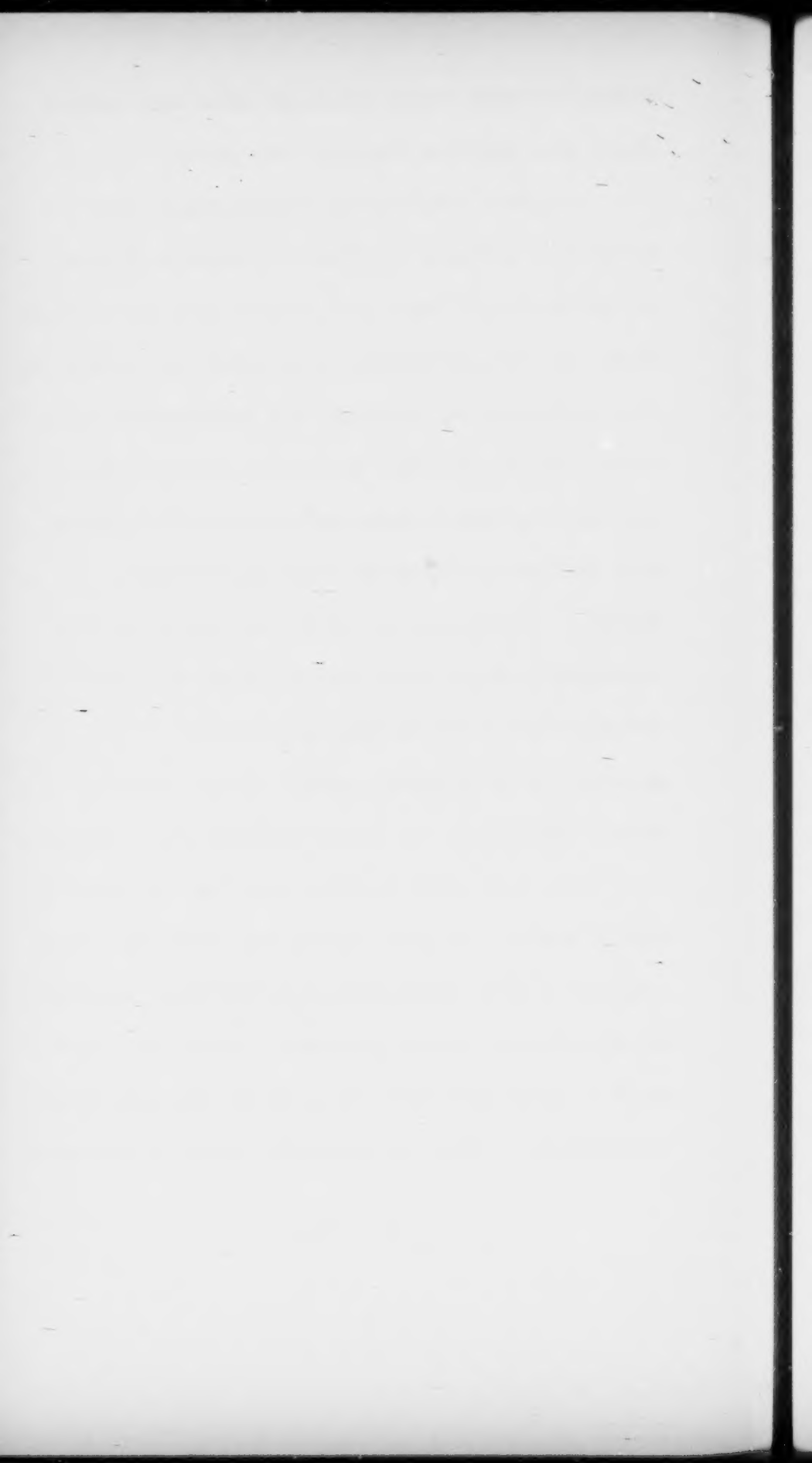
processing against Hudak; that as a result, Hudak's law firm began to disintegrate and the staff affected; that his practice is being and has practically been demolished to such an extent and the he is in need of injunctive relief for the purpose of protecting his interest and for the purpose of protecting clients' interests.

After a hearing of considerable period of time and before the respondents finished presenting evidence in addition of their cross-examination of the plaintiff's witnesses, the parties agreed and stipulated upon a settlement of the matter and presented to the court a stipulation and the agreement for approval. From all that appears, it would seem to be in the interest of all parties concerned, but in particular of



the public, which must depend upon lawyers and their integrity for legal needs that this stipulation be approved and enforced and that the temporary restraining order as stipulated by the parties be converted to a preliminary injunction of this court with continuing jurisdiction until disposed of finally.

This action actually rises after an involuntary bankruptcy was filed against Hudak by Woods. The granting of the agreed upon request of both parties will in a large measure eliminate the need of a bankruptcy judge to concern himself with the rights of lawyers and most concernedly, clients of the lawyers and the public as a whole, by the granting of a preliminary injunction, and the intention of this court to retain jurisdiction, it will be in authority to



you were" (TR of 9-21-87 Hearing, DC #37, p. 14).

Woods referred to a constable who came to serve his wife with a summons in the automobile, accused him of attempted rape of his wife and said, "I come over and grabbed him, called the police, called the police and I beat up on him. I did, I beat up on him..." (Id. at 13). Woods admitted calling Hudak's client, Rosanne Cerillius, and telling her on the phone that Hudak was a rapist and extortionist (Id. at 17). Woods said that he only knew Hudak was a rapist because he was told that he was a rapist and he passed the rumor on the telephone (Id. at 18).

In a hearing on June 13, 1988, Patrick Narcissi testified that he was an attorney and had occasion to sit as an arbitrator in the court of Common Pleas

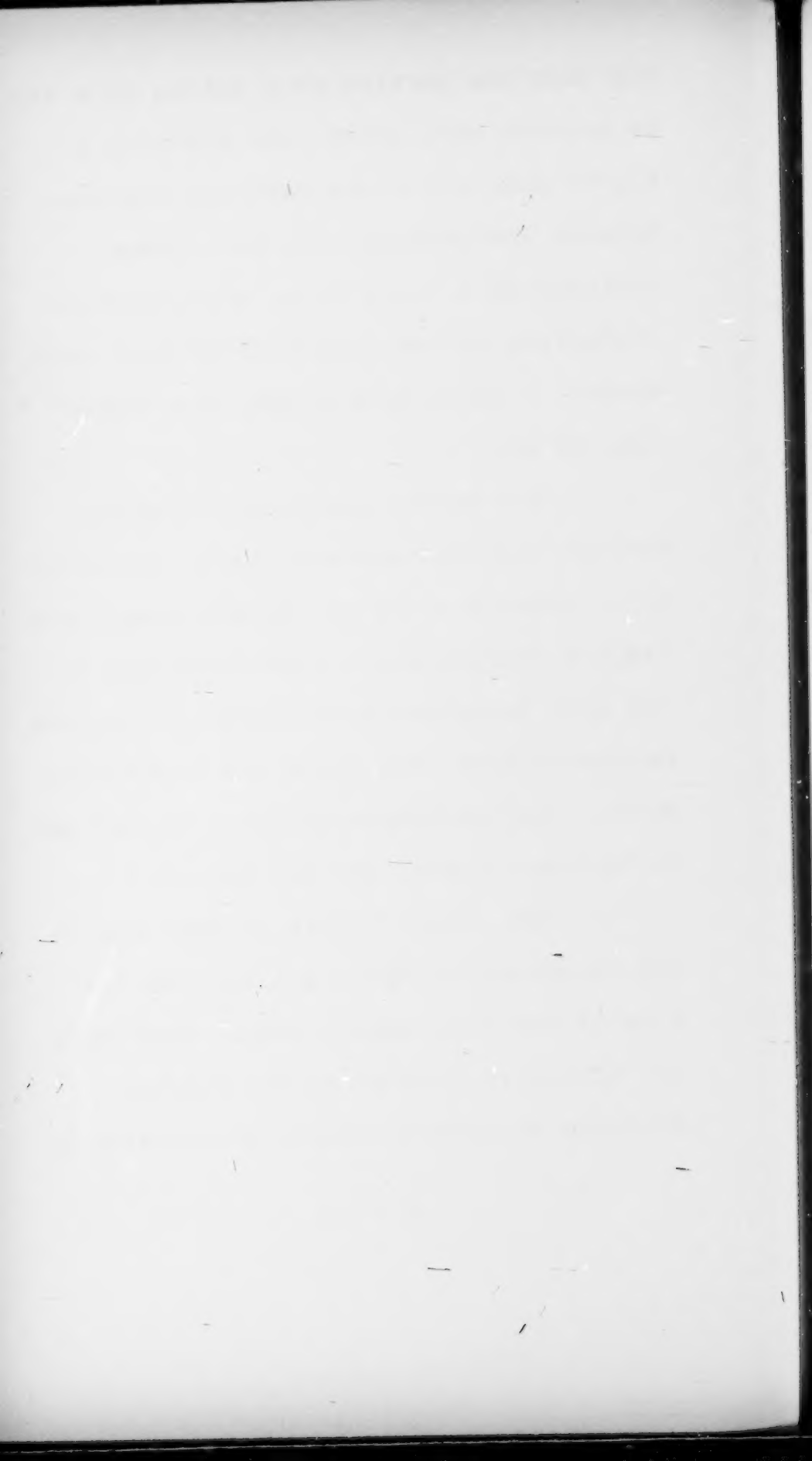
of Allegheny County for the hearings which were held on two cases involving Joseph Hudak, Sharon Lavelle Hudak and Robert Woods; and that he observed Woods' behavior in a hearing approximately "three weeks ago" (TR of 6-13-88 Hearing, DC #43, p 77) (this would make the hearing referred to by Narcissi sometime in late May, 1988). Narcissi described Woods' conduct as "provocative and odd" (Id. at 78). He testified that in the hearing room he observed Woods call Sharon Lavelle Hudak a douche bag on two occasions; that he observed Woods call Hudak a faggot; that at one point, it was necessary for the Chairperson, Diane Berman, to call the sheriff's deputies (Id. at 79); That they ruled against the plaintiff in both causes of action and ruled against the defendant on her counterclaim (Id. at 81); that it appeared to



him that the parties were acting in a way to provoke each other into starting a fight; and that there were bad feelings between the parties, but that these feelings were "more so by the plaintiff (referring to the plaintiff in that case, Woods), I would have to say your Honor" (Id. at 82).

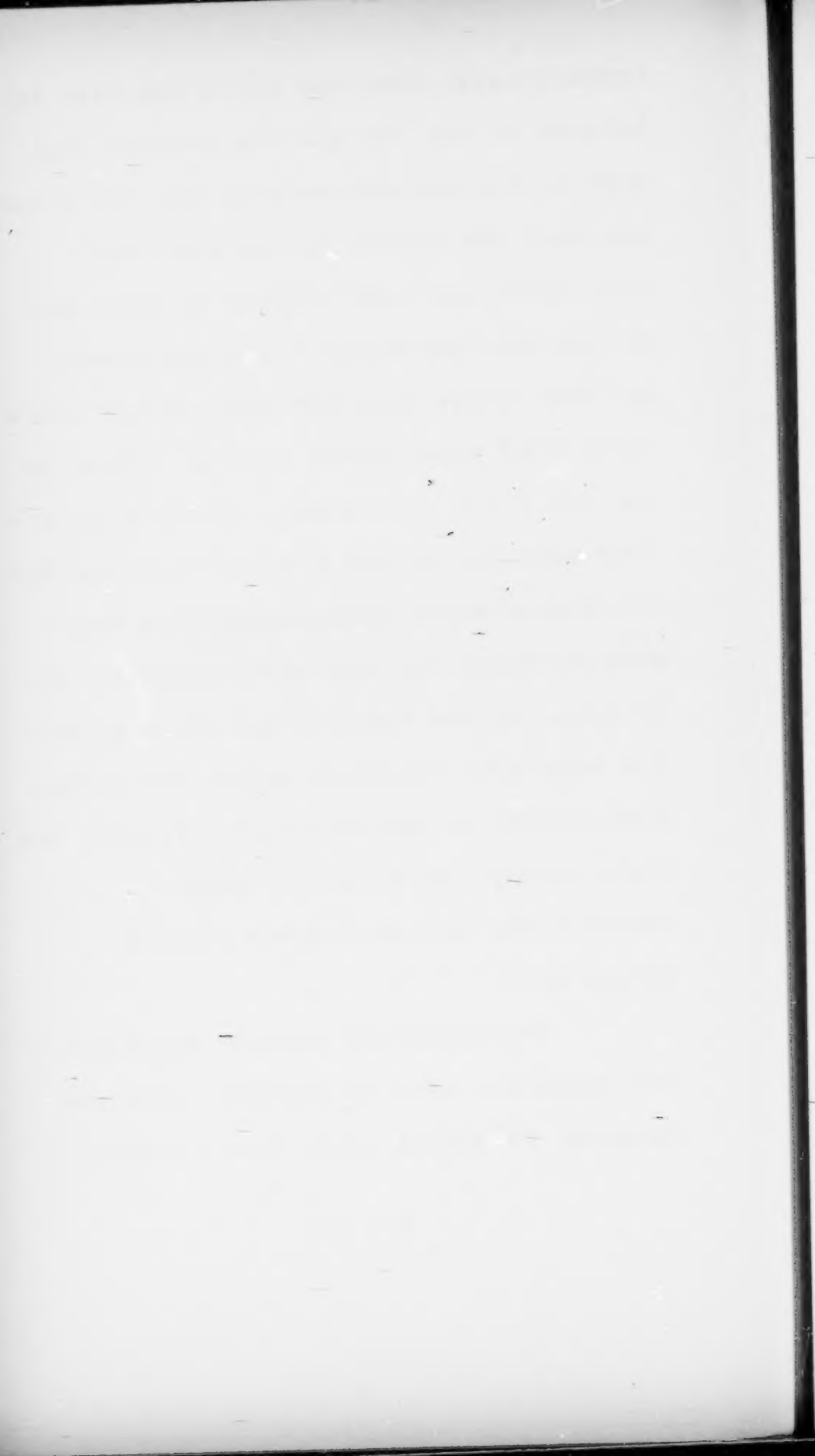
The second completely credible witness was Mrs. Maryann Lampl, the mother of Hudak's attorney, Robert Lampl, and Lampl's receptionist. She testified to the many telephone occurrences during the period of time when Woods was bombarding Hudak. Her responses in court showed her to be open, forthright and honest.

Mrs. Lampl testified that she is the telephone receptionist for the law firm of her son, Robert Lampl; that this law office is located in the Renshaw Building on Liberty Avenue in Pittsburgh,

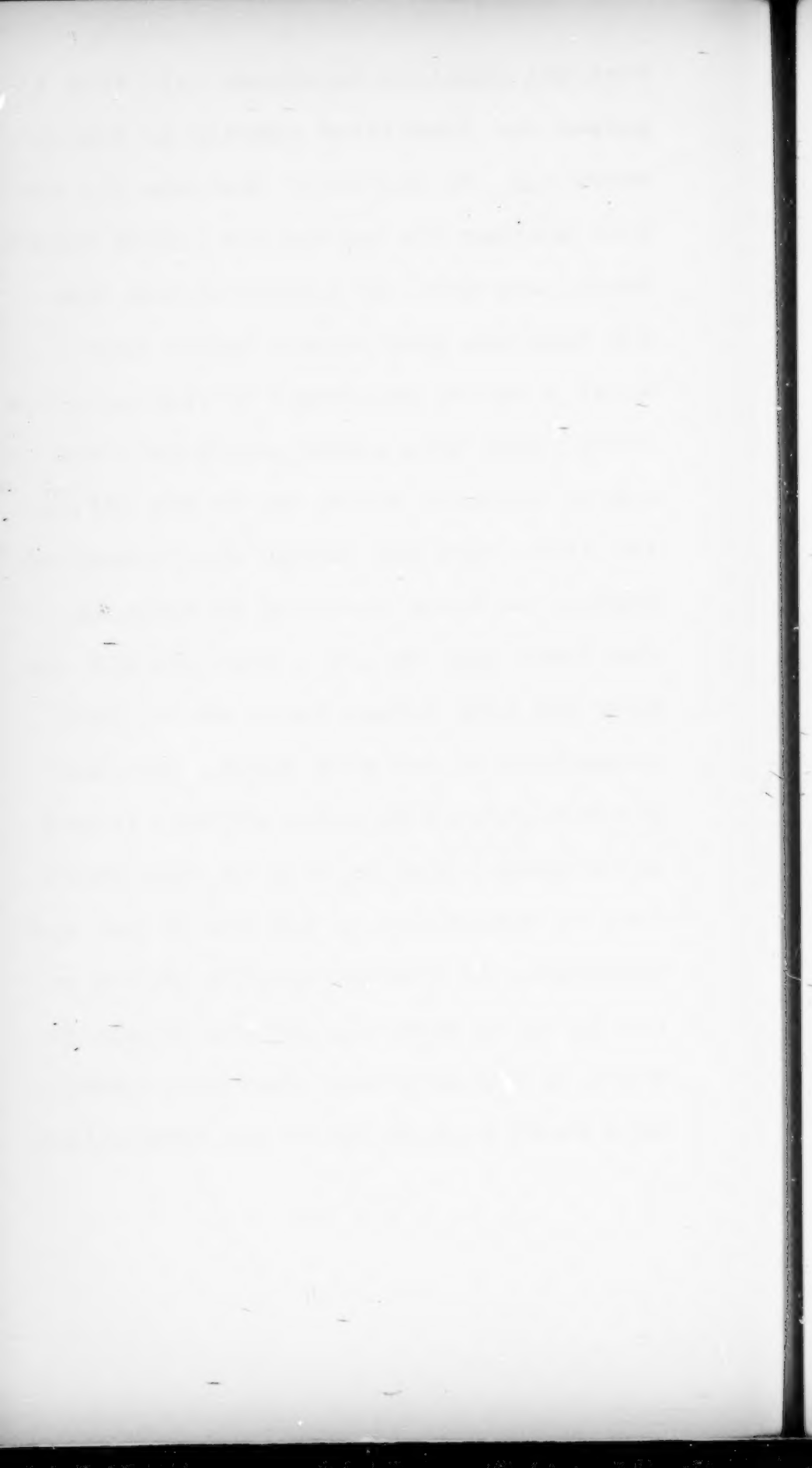


Pennsylvania; that her son's law firm is located on the 7th and 8th floors; that most of the offices were on the 7th floor and that she worked on the 8th floor; that there are some offices in what she called the "penthouse," the 9th floor, but that these were not part of her son's firm; that Hudak moved into an office on the 9th floor in October, 1987 (TR of 06-7-88 Hearing, DC #38 p 152); that she did not know whether arrangements had been made by Hudak for his telephone calls to be taken by the Lampl firm, but that she did take some telephone calls for Hudak, even though he had nothing to do with the Lampl office, or with the Lampl secretaries; and that Hudak did not employ her.

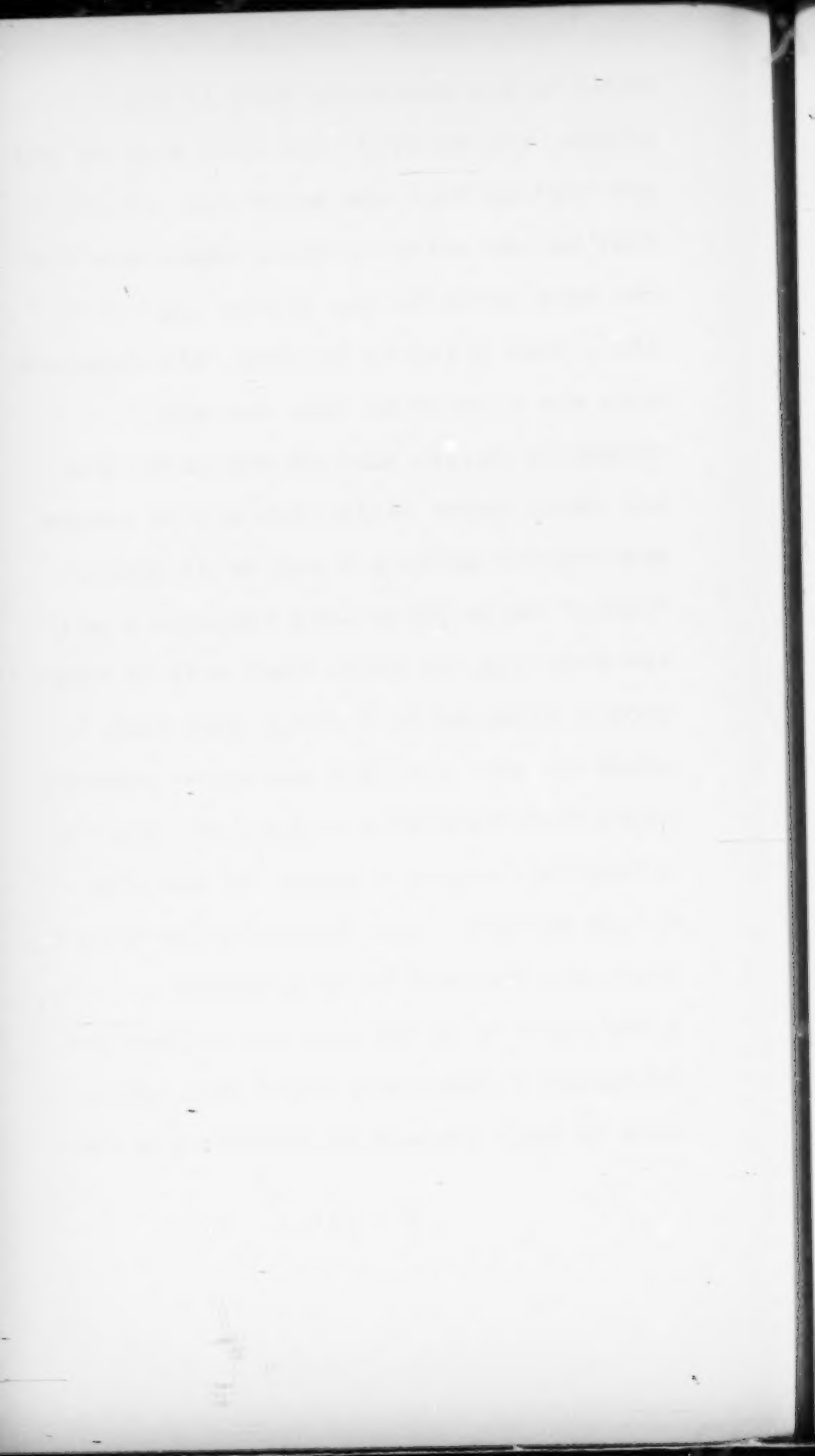
She testified that in November and December, 1987 or January, 1988 she received telephone calls from clients;



that she received telephone call from a person who identified himself as Robert Woods (Id. at 152-153); that she did not know whether the person was indeed Robert Woods, but that the person stated that his name was John Robert Woods; that after a while, she began to recognize his voice; that this person would call and ask if attorney Hudak was in the office (NT 154); that the person who identified himself as Woods referred to Hudak as the "rat" (Id. at 155); that she did not know who John Robert Woods was or what connection he had with Hudak; that she did not know if he was a client, friend or neighbor; that he said he was coming over to the office to get his things and threatened to disrupt Hudak's office or rip it up in order to get the things to which he was entitled; that Mrs. Lampl told Woods that he could not come unless

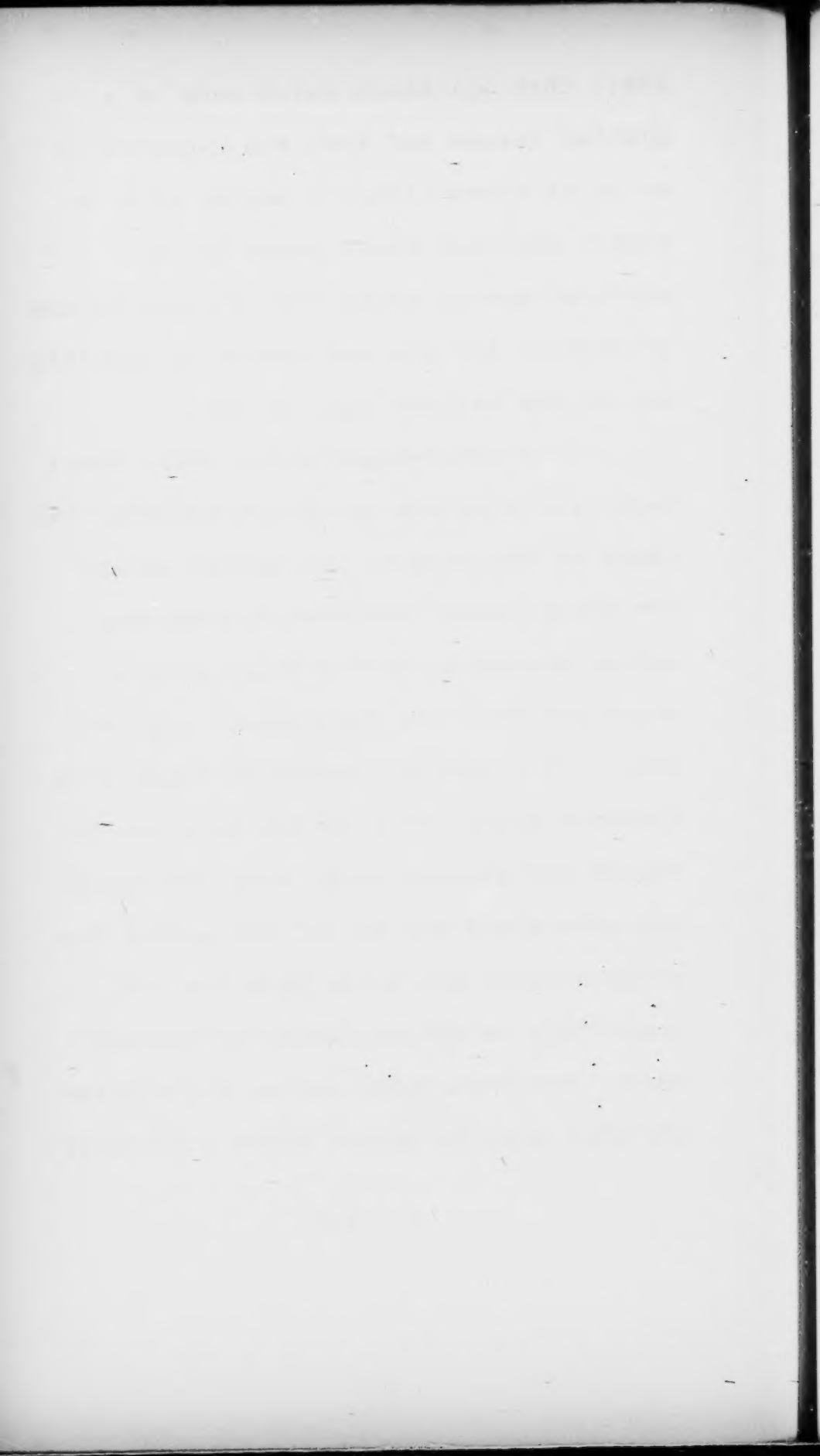


Hudak or his secretary were in the office, but he said, who will stop me and she replied that she would (Id. at 155); that he was going to bring reporters and the news media to the office (Id. at 156); that prior to October, she received what she considered very few odd telephone calls; that in the past, she had nasty phone calls, but all of sudden she started getting a series of really "kooky" calls which were completely off the wall (Id. at 157); that most of these people referred to divorce when they spoke to her; that she was given several names with telephone numbers and was unfamiliar with the names, as was the office manager; that twice during this time, she decided to do a little investigating on her own and called the telephone numbers and found that there were no such numbers in service (Id. at



159); that all these calls were of a similar nature and that she received 18 or 20 of these within a matter of five weeks; and that these phone calls occurred mostly after 4:00 o'clock in the afternoon; and she was unable to identify any of the callers (Id. at 160).

In cross-examination, Mrs. Lampl testified that she could not remember the names of the persons who called except for three names, and that one man who called seemed to have a Negro accent which she felt was "pretended" (Id. at 161). This person identified himself as Clarence Brown; this person told her he wanted his divorce right away and could not understand why he had not gotten his divorce; that Mr. Woods gave him the Lampl firm telephone number to contact Hudak; and that Brown called quite often and that when he called there was always

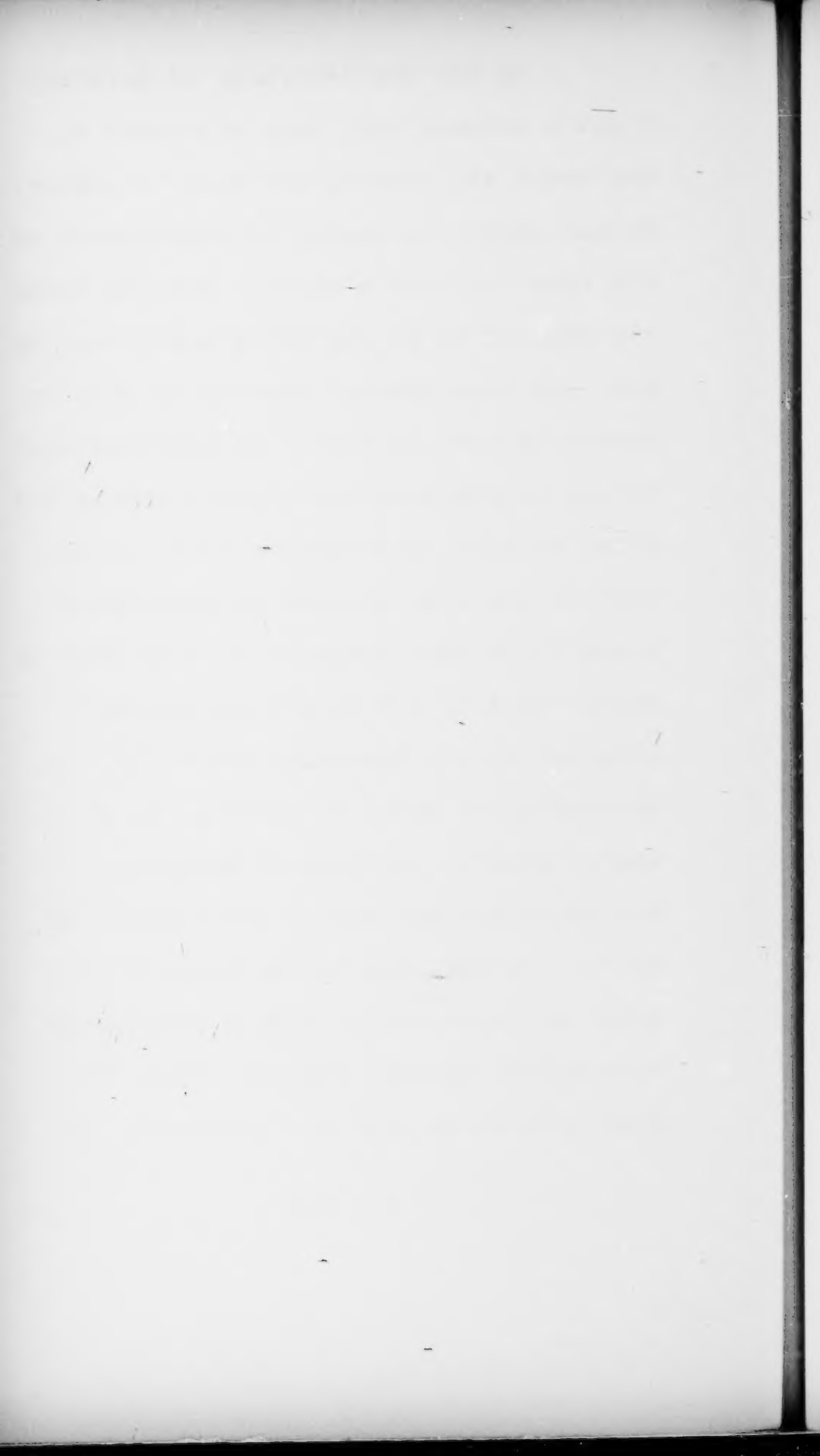


noise in the background like he was at a cocktail party and had a few drinks (Id. at 162). When questioned by the court, Mrs. Lampl testified that she received similar calls from approximately 10 to 15 people in addition to Brown, a man named Chico and Woods. When questioned by the court "how many of them told you that Mr. Woods told them to call?," Lampl replied "90%" (Id. at 170).

Anthony Guida, an attorney employed by the law firm of Buchanan Ingersoll, testified in this proceeding. I found him to be forthright, honest and completely believable. Guida became involved in this matter in his occupation as an attorney. When Hudak rented the law offices at the Bigelow, he fell behind in his rent and moved out. Guida was assigned the case and he filed a confession of judgment lawsuit against

Hudak to obtain a judgement for the back rent and to accelerate on the lease agreement (TR of 6-9-88 Hearing, DC #36, p. 17). He testified that when the judgment was published in the Pittsburgh Legal Journal, he received telephone calls from a person giving him information as to Hudak's whereabouts; that the person who called him to notify him of Hudak's whereabouts identified himself by the name of Richard O'Brian; that O'Brian informed him where Hudak had lived and where he had moved his office furniture; that he received the phone calls only from O'Brian; that these calls occurred after January, 1988; that O'Brian made more than two and less than five telephone calls; and that O'Brian identified himself as an ex-client of Hudak and stated that Hudak had screwed up his divorce.

As for the testimony of Geisler, I saw a witness who, when addressed by the court and turning his head to answer, showed immediate change of countenance as his face lit with a smile. When he faced his counsel as he was being questioned by him, his face gleamed showing me that he testified with emotion. He admitted that he was in business for himself before and after he came into Hudak's association; that he was also engaged in bankruptcy cases which were competitive with that of Hudak; that he did have a percentage interest in all the cases which he processed for Hudak in addition to a weekly salary; and that he strongly indicated his admiration and loyalty to Woods. In response to the court's question regarding Geisler's friendship with Woods, Geisler replied, "Yes, it does have to do with my friendship. I



would stand behind Woods in anything" (NT of 6-14-88 Hearing, DC #44, p. 198). He affirmed this answer two more times when further questioned by the court.

The testimony regarding the high volume divorce and bankruptcy case practice and Geisler's work on the cases is difficult to follow. After the stipulation and injunction, 702 divorce files were turned over to Geisler. Of these cases, 521 had been filed in Cameron County and 181 of these cases needed yet to be filed. Geisler testified that he took only four unfilled bankruptcy cases to complete after the injunction (Id. at 115-116. The decree fees on the 702 cases would amount to \$6,318; the filing fees and the decree fees on unfilled bankruptcies totaled \$360.00; \$11,293.50 would be required as filing and decree fees in

these cases: and the actual amount turned over to Geisler by Hudak was \$10,317.00 (Id. at 118). He testified that there are at least 244 unfinished cases (Id. at 120); that there are various problems in these unfinished cases; that Geisler, in fact, used money turned over to him by Hudak for expenses other than filing fees and decree fees; that Geisler used this money for postage, photocopies and postal receipts (Id. at 124); that Geisler used this money for notary fees, Federal Express, typewriter rental, and stationery (Id. at 126); and that there is no money left in the special account and there continued to be expenditures necessary for court costs (Id. at 127).

\ The stipulated consent order provides in pertinent part the following
/ for the completion of the cases:

5) on or before September 30, 1987, Joseph E. Hudak shall deliver to Michael S. Geisler all currently active divorce and bankruptcy cases, filed or unfilled, in Hudak's possession.

6) at the time of the delivery of the files, Hudak shall deliver to Geisler the following sums:

a. Thirty-four dollars and Fifty Cents (\$34.50) for each unfilled divorce case;

b. Nine Dollars (\$9.00) for each divorce case that has been filed, but for which an application for decree has not been filed;

c. Ninety Dollars (\$90.00 for each unfilled bankruptcy case.

7. Upon receipt of the above funds, Geisler shall:

a. immediately deposit all funds, into a trustee or client account;



b. keep a record and account of each receipt and expenditure and, on a monthly basis, make available to Hudak for inspection copies of such records and accounts;

c. use such funds only for the purpose for which paid to him.

It is clear from this stipulated order what the funds were to be used for. The funds were to be used as filing fees and decree fees. It is also exceedingly clear that it was Geisler's duty to deposit all of the funds into a trustee or client account and to keep records and use the funds only for the purpose for which they were paid, and to account for all of these monthly to Hudak.

There were various reasons and excuses offered by Geisler throughout the testimony as to why these cases were not completed. The evidence brought before



this court was insufficient to determine exactly what cases are not finished and what need to be done on the unfinished cases. However, this does not provide any excuse whatsoever for Geisler for his non-performance. Number 8 of the stipulated consent order specifically provides "Geisler shall perform the following:

a. efficiently, adequately, and expeditiously, and with the right to resort by any aggrieved party to the presiding Judge, Geisler shall process and complete all of the actions assigned to him (emphasis added);

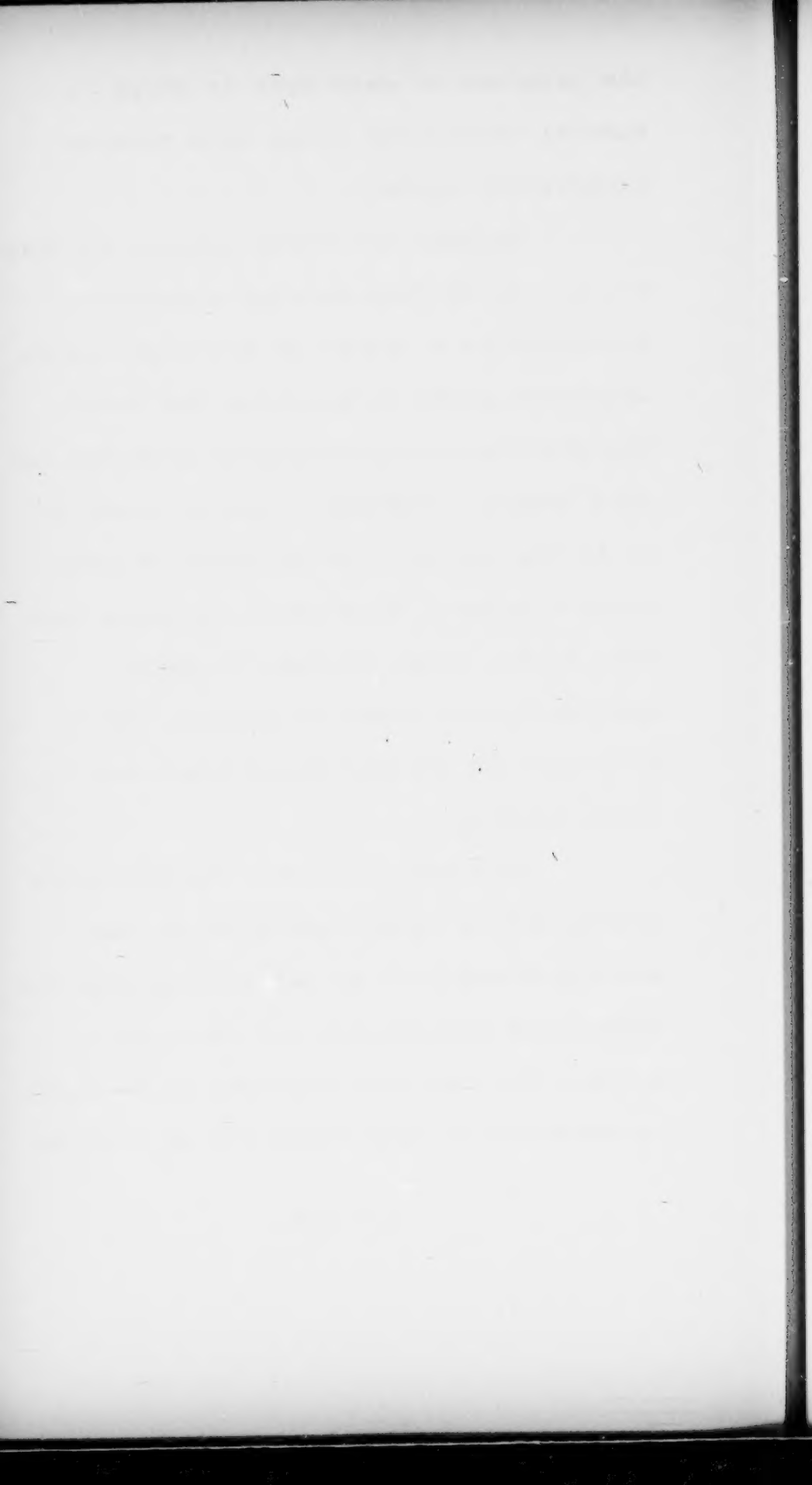
b. until termination of all cases, Geisler shall report to Hudak on the progress of each case on a monthly basis;

c. until termination of all cases, Geisler shall report to Hudak on

the progress of each case in which special complaints arise on a regular, expeditious basis."

Excuses are worth nothing to this court. Aside from Geisler's general knowledge as a lawyer of his right as an aggrieved party to petition the court, the stipulation specifically provides for this remedy. Instead, Geisler chose to do it his own way, in defiance of this court's order. This court believes that this matter needs further in-depth examination in order to protect the interests of clients whose cases are still pending.

Lori Ann Lassiter, the secretary discharged by Hudak testified on the witness stand with an ulterior motive for testifying against him and favoring Woods. She was then employed by Geisler, in association with Woods (TR of 6-13-88



Hearing, DC #43, p. 5). Her ulterior motive combined with her demeanor in the courtroom demonstrate to this court a complete lack of credibility. I accept none of her statements as credible.

Since Herman Stetzer, the brother of Mrs. Woods, had a financial interest in his testimony and a related interest because he was the brother-in-law of Woods and performed continuing services for which he denied receiving payments, he was not credible by the way he hedged in answering questions dealing with payments from Woods (TR of 6-14-88, DC #44, p. 293). His testimony was not credible.

The solicitor for the Disciplinary Board, Mark Weitzman, appeared on the surface to be a credible witness by his demeanor as did the employees of the District Attorney's

office, Richard McHugh and Edward Tassaro, who were required to investigate and summarize cases before sending them to a magistrate. Nevertheless, there was evidence to show that they were pressured by many persons involved, but especially provoked by Woods and Geisler, to such an extent that they believed these mass complaints were all the fault of Hudak. The large number of these charges should have made them suspicious of the basis for such a mass assault against Hudak.

During the contempt proceeding, an in camera hearing was held, all parties were sworn to secrecy, and the court reporter was ordered to impound the record until further order of court. The hearing was called in camera for determining two motions to quash or modify a subpoena of the plaintiff



against James Shephard and Debbie Hardy, represented by attorney Raymond Seals indicating in the motion that the witnesses might have been guilty of violating prohibitions under the Wiretapping and Electronic Surveillance Control Act, 18 Pa. C.S.A. Section 5701 et. seq. The witnesses were interrogated by Mr. Seals and by this court, and the motions were granted.

This court recognizes that it is an oddity when a daughter testifies against a father or when a father testifies against a daughter, or when a mother testifies against her own child in the way that these closely related individuals talked in the courtroom in the instant case. The plaintiff's wife, Sharon Hudak, formerly Lavelle, nee Woods, was proverbially "caught between the frying pan and the fire." Except in



her case, I believe she was truly in love with Hudak because she gave up much income from her father and a certain amount of love and affection for herself and her children as well as bringing on irritation from her grandmother, and accepted instead merciless antagonism and more vindictiveness by her father, Woods, after her marriage for having chosen the affection and eventual marriage relationship of Hudak.

When she testified before me, I saw how determined she was in her choice of marriage with the plaintiff than for amity with her parents. I could see her anguish and perturbation unmistakably as she spoke. She testified against her father of the persecution against Hudak and her hurt was visible.

She testified that she received 40 calls from clients and 10 calls from



creditors after October, 1987 on her unlisted number and she and her husband, Hudak, received approximately 100 letters at their home on Beechwood Boulevard after October, 1987, but none before then. Sharon testified that her home for which she held title was being foreclosed by the mortgagee, at the insistence of her father, the defendant Woods, and this Wood did not deny; and that she had to make a lump sum payment of \$7,000 to the mortgagee rather than have it go to a sheriff sale. She borrowed the money from relatives, but did not disclose who loaned her the money. While her father had been making cash contributions to her or for her children, Sharon, herself, was not entirely dependent upon him. She is a Registered nurse and is employed at Heritage Shadyside.



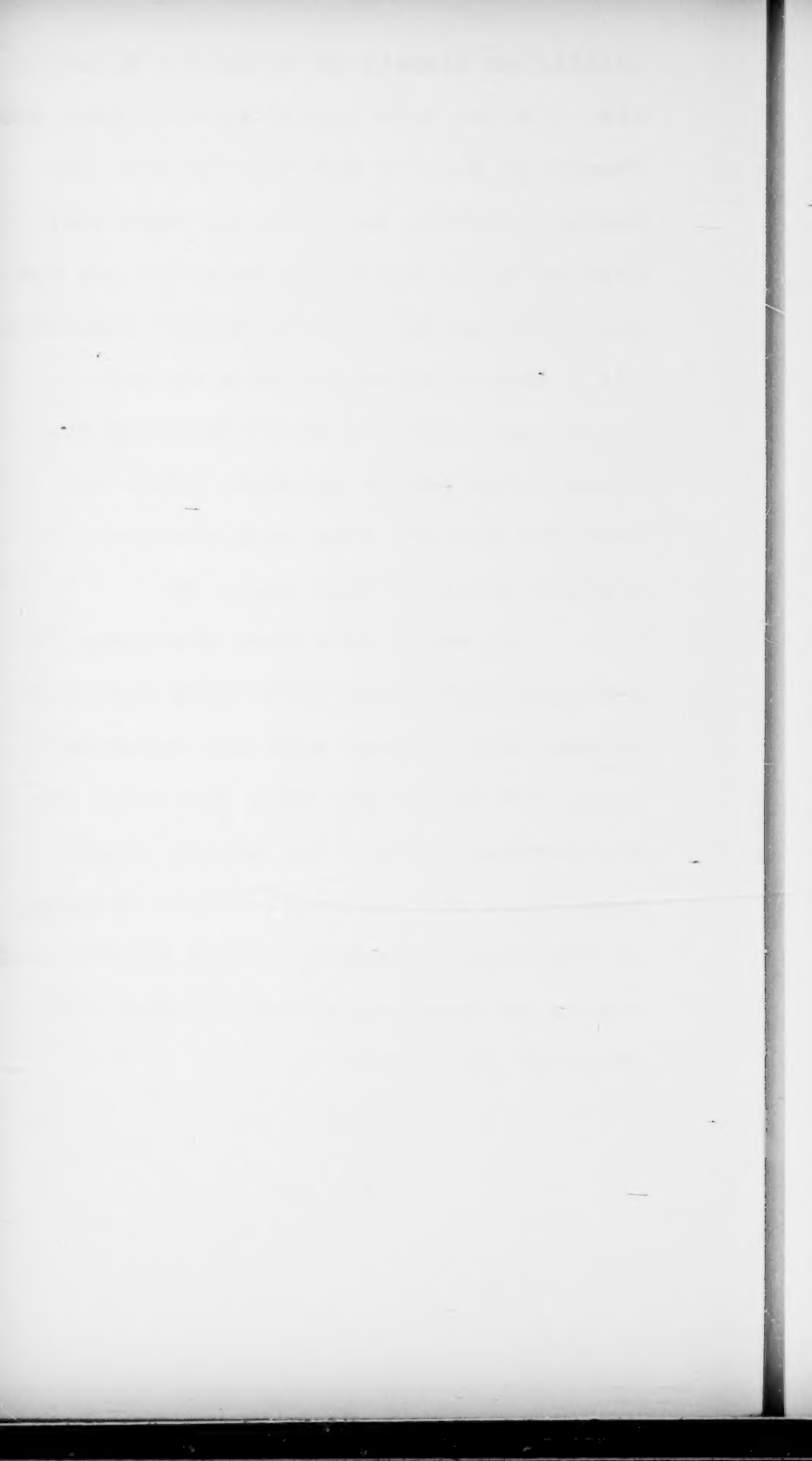
Sharon Lavelle Hudak testified that her father, Robert Woods, called her children bastards, and that he called her a douche bag. Specifically, she testified that he stated, "you better not watch the douche bag's bastard children any more" (TR of 6-7-88 Hearing, DC #38, p. 67). She testified that prior to an arbitration hearing, her father kept calling Hudak a faggot and her a douche bag (Id. at 83); that during the arbitration hearing, he kept calling her names before the board, such as douche bag (id. at 84); that Woods kept jumping up and screaming off and on and eventually three sheriffs were called into the room (Id. at 85); that Woods kept trying to kick Hudak under the table during the hearing (Id. at 85); and that twice during the hearing, her father testified that she was not his daughter

(Id. at 86). Again, this court considers this evidence, not for the purpose of showing the truth of these utterances, but rather to show Woods' attitude toward Hudak and his own daughter as a result of her association with Hudak. See Hunter v. Alles Chalmers Corporation, Supra.

Sharon Lavelle testified that she has observed Richard O'Brien near her home on a number of occasions; that up until about two months ago (this hearing was in June, two months prior to this time would be April), she observed Richard O'Brien near her house at least 10 times a week; that her father gave him her Skyhawk car; that he would go past the house very slowly; that her children come running into the house frightened because of this (Id. at 115); that she received two telephone calls after October 1, 1987 from a person who

identified himself as Richard O'Brien; that O'Brien told Sharon Lavelle that she should go down to the Bigelow that her husband (Hudak) was with his mistress; that he would say "come down now and see what your perfect Joe is doing" (Id. at 116); that O'Brien did this on two occasions; that she never received any phone calls before October, 1987; and that she did not even know Richard O'Brien prior to that time. Id.

It would have been momentous if the defendant Woods would have testified defensively against what his daughter said, but he did not take the stand for any purpose to deny any matter which might have been critical to his defense in the case. Therefore, what Sharon said stands believable, uncontradicted and accepted as factual.



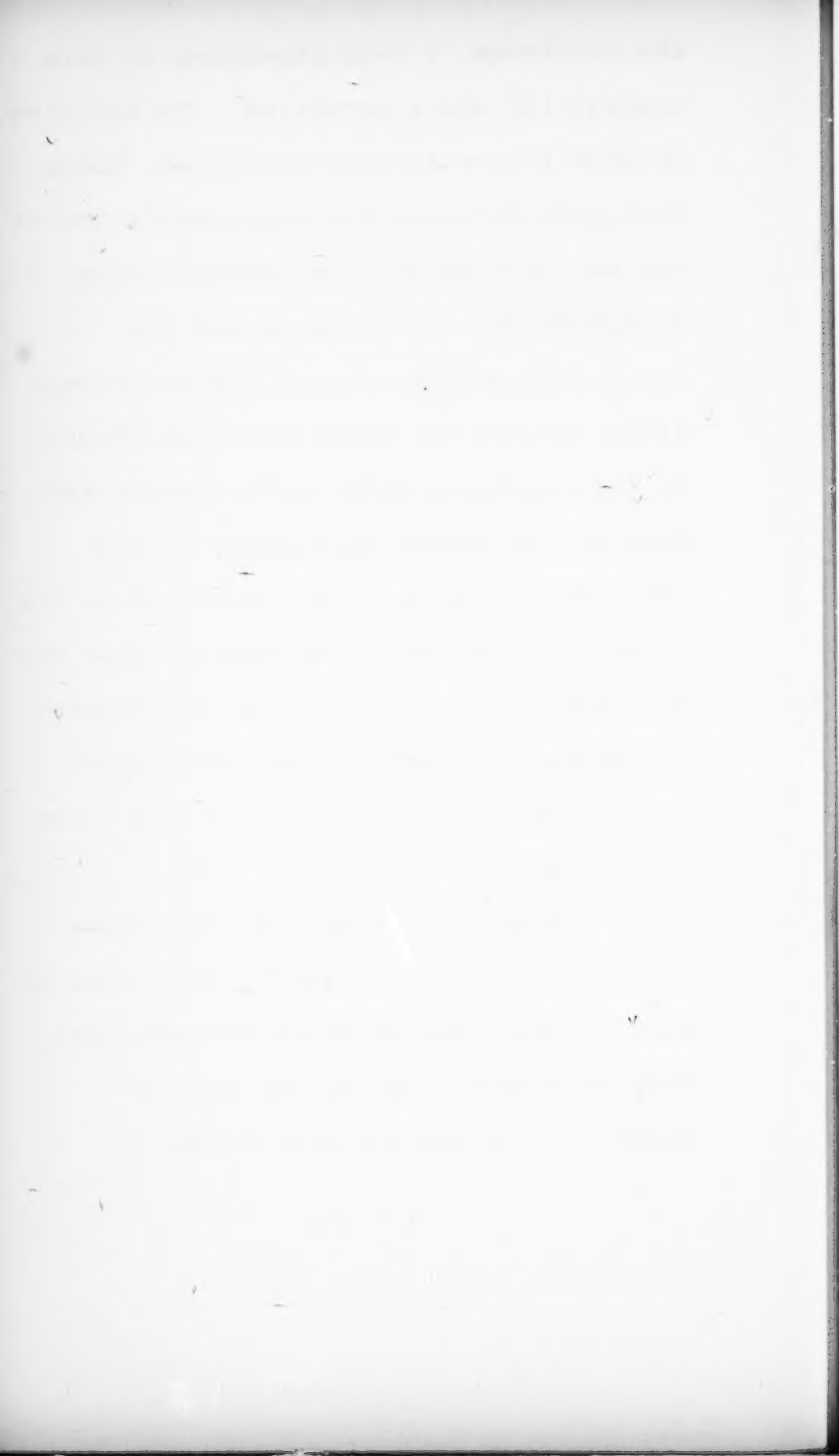
While the defendant Woods did not testify in this contempt hearing and because the contempt hearing is a sequel to the original injunction hearing, it stands and it is incumbent for this court to consider the testimony presented in the injunction proceeding and make such findings of fact which the evidence as a whole by the preponderance thereof based upon credibility or lack of credibility and the relevant exhibits which are material in blending and cementing a composite so that all which happened before this court in these two hearings form a basis for a determination of the issues raised here, and for finalizing this case according to law. See Wilson v. Huffman, 712 F.2d 206 (5th Cir 1983).

In reviewing the evidence and testimony of Woods and his demeanor on the witness stand and of his conduct in



the courtroom, I have attempted to base credibility where permitted. In addition to what I have already discussed, Woods testimony reflects the characteristics of the man as a whole, his contradicting exaggerations, his ranting and his openly impudent hostility. This witness exhibited, in the words which he uttered in the courtroom under oath, rancor and malice. He wanted this phase of his testimony to be seen and heard and by his failure to contradict so much of what was said against him. Therefore, to extract any elements of believable facts upon which I could base findings in his favor is difficult.

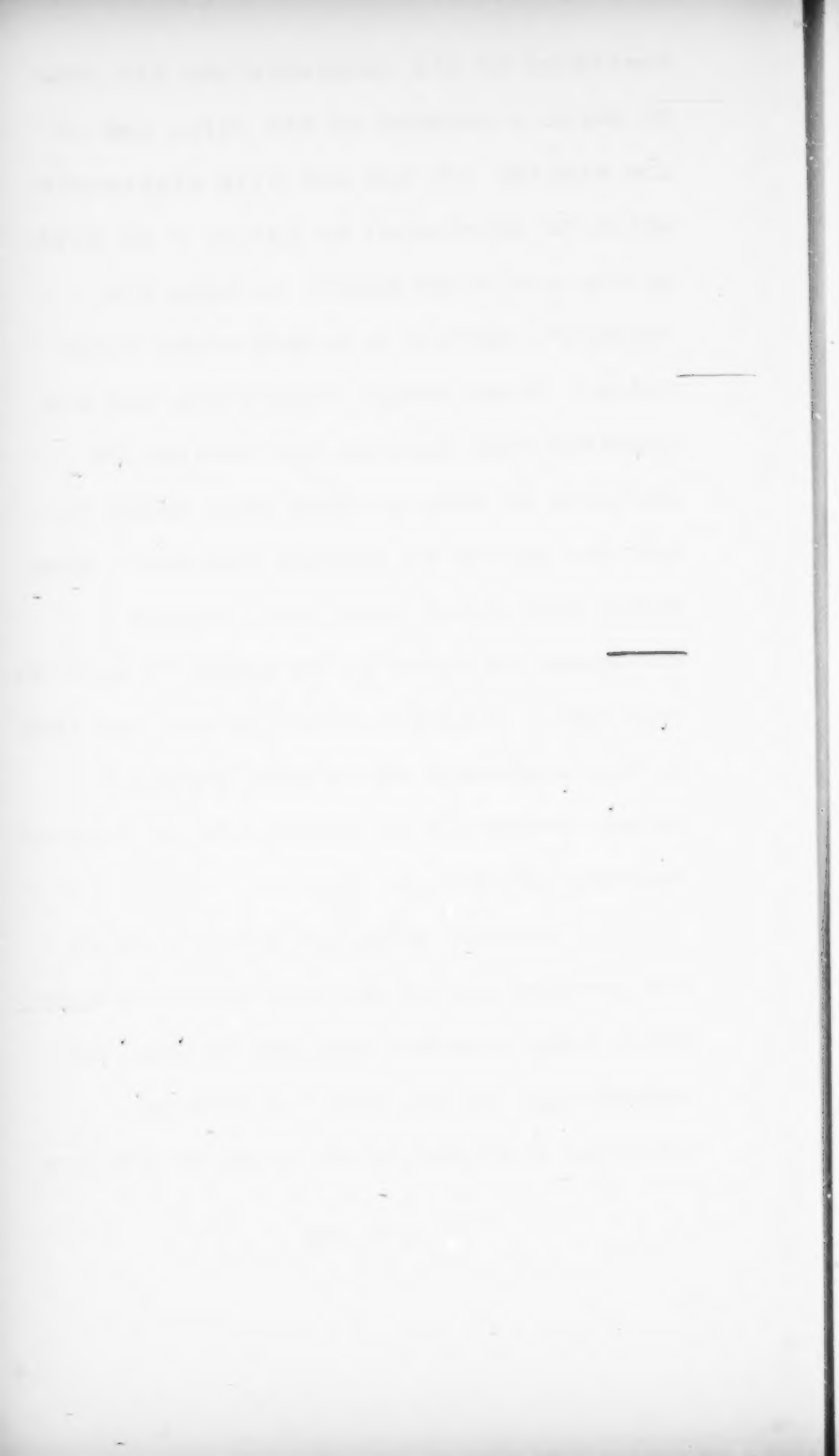
When Woods asserted that Hudak had made certain statements, they were so much in character of Woods himself that they were hard to accept as that of Hudak. It is exactly like Woods'



testimony of the constable who had come to serve a summons on his wife, and of the similar out and out vile statements which he attributed to having been said by the plaintiff Hudak, to have him, "Robert", destroy a Common Pleas Court Judge. These Woods' utterances are not repeated here because the recital is derisive of race so that when added to his own malice it becomes obscene. When Woods attributed this vile, vulgar statement as Hudak's, he added "I want to ruin her. I want to destroy her, as that is his statement about many people."

(Woods referring to Hudak) TR of 9-21-87 Hearing, DC #37, p. 26).

Further examples are: "I am in the process now of getting Sharon's kids taken away from her because of you, Mr. Hudak" (Id. at 5); and "I told my daughter that she is as crazy as you are



if she even associates with you. I told her how you react, how you foam at the mouth, how snot comes down your mouth, how you're the town idiot, and you're a total alcoholic drunk and you're nuts" (Id. at 6).

On another occasion, Woods charged the constable who was serving a summons or subpoena on his wife with rape which he later reduced upon questioning by the court to attempted rape and then to beginning of attempted rape (Id. at 12,13).

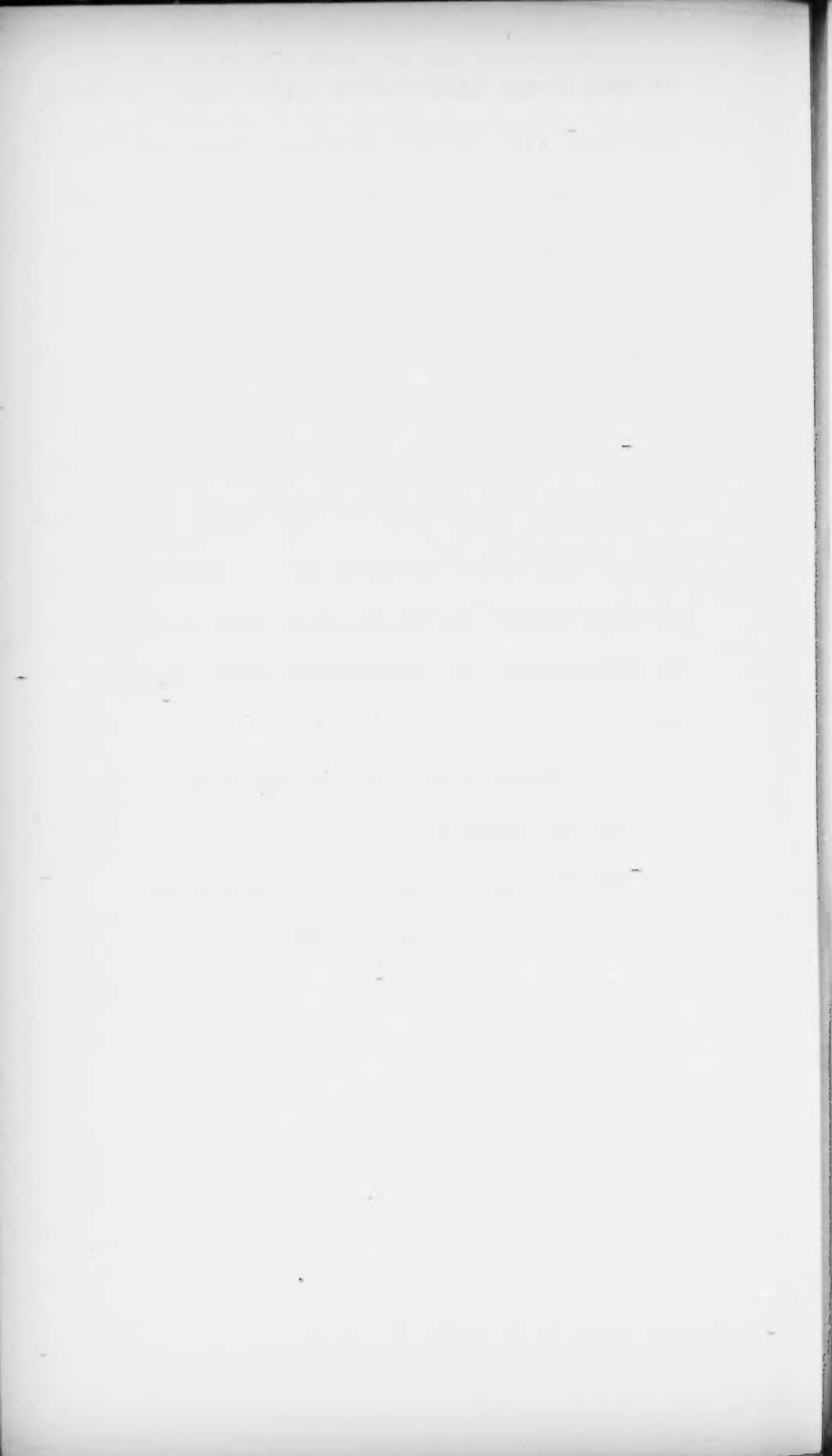
Upon questioning by Hudak, the following ensued:

Q. "Did you yourself telephone my client, Rosanne Cerillius?

A. Yes.

Q. Did you tell her that I was a rapist?

A. Yes.

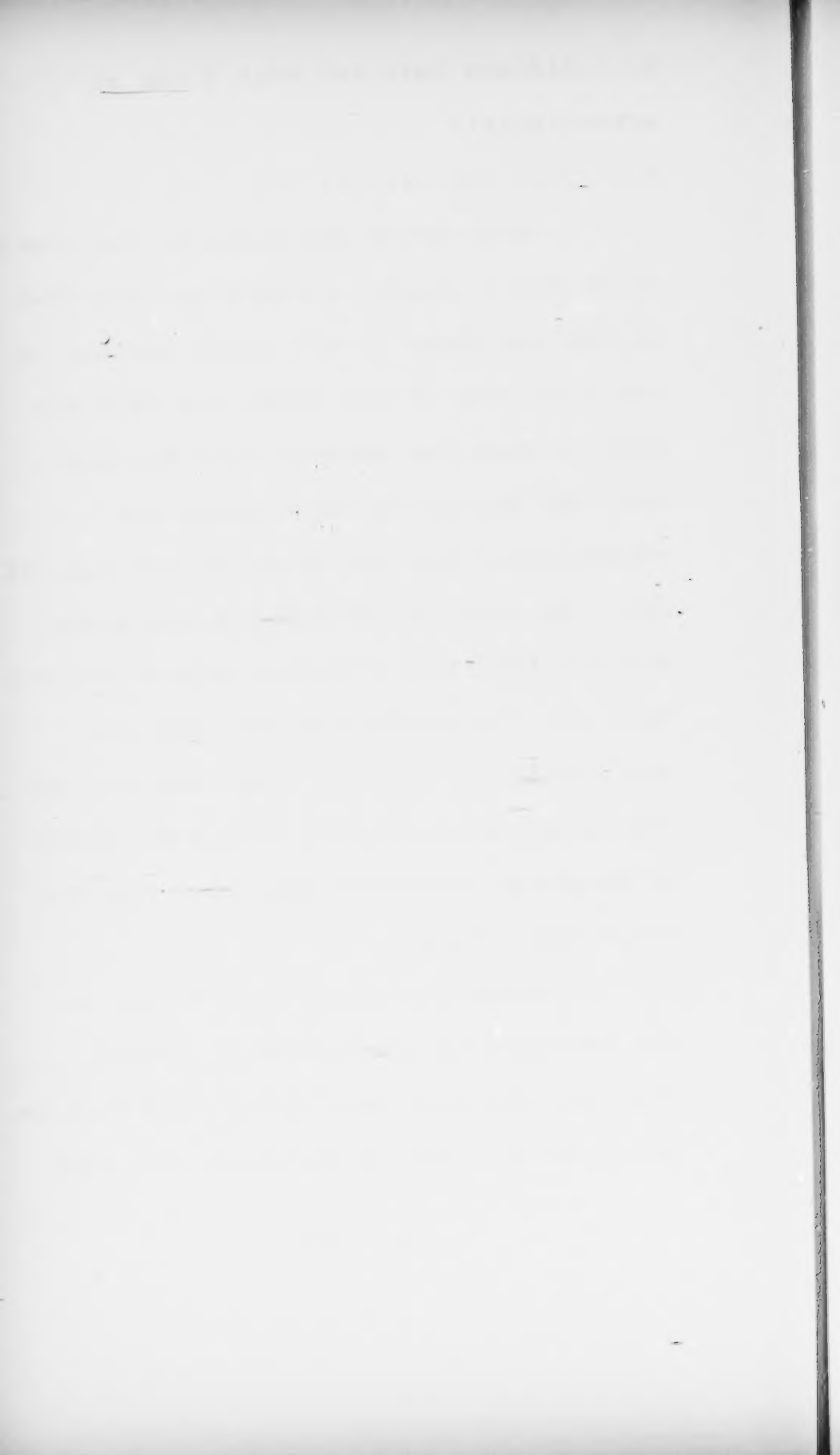


Q. Did you tell her that I was an extortionist?

A. Yes" (Id. at 17).

When Woods was asked by the court if he was a lawyer, he said no, but that he had the right to all legal matters in the file room of the Hudak law firm and that he took the message pads because they had telephone calls which the receptionist had not given to him (Id. at 26). He also called Hudak's secretary and admitted that " I told Bonnie you are nuts and I'm afraid for her insanity. And I said, if you don't believe me, ask anyone who's associated with him, except my daughter, that you are, that you are nuts" (Id. at 14).

Woods testified that "prior to her becoming involved with Mr. Hudak ... [he] and she were very close" and that he had given her many gratuities, but that



her relationship with Mr. Hudak has caused "a rift between me, a rift between my wife and my daughter, a rift between my mother-in-law and my daughter, a rift between my other daughters and my daughter. And one of the main reasons is that I am scared to death that Mr. Hudak is going to kill" (Id. at 32-33).

The plaintiff Hudak called as one of his witnesses his mother-in-law, Geraldine Woods. Her testimony also revealed acrimony and her lack of knowledge of her husband's business which it was said belongs to her. In fact, she stated "they were, because I am the company and he (Woods) handled everything," and "I'm the company. He handles the company. He manages the company" (TR of 6-9-88 Hearing, DC #36 p. 66). She stated that Woods handles the business and she handles her home; that